Supreme Court, U.S.
FILED

①

001690 MAY - 8 2001

No. OFFICE OF THE CLERK

In the
Supreme Court of the United States

CHARLES H. STURGEON,
Petitioner,

v.

DUANE BENTON, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CHARLES H. STURGEON
2125 CHERRY COVE COURT
MARYLAND HEIGHTS, MO 63043
(314) 434-0793

Petitioner, pro se

191 pp

QUESTIONS PRESENTED FOR REVIEW

I assert misuse of office at all levels of Missouri's judicial branch of government and judge-private attorney collusion. The assertions affect a larger class of citizens, state wide.

Question No. 1. Should it be permitted during proceedings in state trial court, appeal court and supreme court lasting over four years for my assertions and evidence of wrongdoing to not be acknowledged, in writing or orally, by denial or otherwise, in any state court findings, conclusions, recommendations, rulings, orders, judgments, decisions or opinions?

Question No. 2. Should it be permitted during later proceedings in federal courts for application of various doctrines of abstention and immunity to have the similar effect of concealing the undeniable factual circumstances of my case?

Question No. 3. While addressing proceedings where court judgments were issued by procedure deemed to be in violation of the Missouri Constitution, should the Supreme Court of Missouri be permitted to uphold the court judgments and terminate the right of appeal--a right that was secured by the Missouri Constitution, statute, court rules and opinions? This question affects several alternative groups: (a) me, asserting intentional unlawful and unethical judicial acts but not (directly) the unconstitutional procedure, (b) for others in active appeal (perhaps 20 cases), (c) for those having appealed unsuccessfully earlier, and (d) for all those subjected to the unconstitutional procedure (perhaps thousands of cases).

PARTIES TO THIS PROCEEDING

PETITIONER

Charles H. Sturgeon

RESPONDENTS

JUDGES AND FORMER JUDGES OF THE SUPREME COURT OF MISSOURI: Chief Justice Duane Benton, Judge Ann K. Covington, Judge John C. Holstein, Judge Stephen N. Limbaugh, Jr., Judge William Ray Price, Jr., Judge Ronnie L. White, Judge J. Wolff, Former Judge Edward D. Robertson, Jr.

JUDGES AND FORMER JUDGES OF THE MISSOURI COURT OF APPEALS, EASTERN DISTRICT: Chief Judge Robert G. Dowd, Jr., Judge and Former C.J. Lawrence G. Crahan, Judge Clifford H. Ahrens, Judge William H. Crandall, Jr., Judge Kathianne Knaup Crane, Judge Robert E. Crist, Sr., Judge James R. Dowd, Judge Gary M. Gaertner, Judge Mary Kathryn Hoff, Judge Kent E. Karohl, Judge James A. Pudlowski, Judge Mary Rhodes Russell, Judge Paul J. Simon, Judge Richard B. Teitelman, Former Judge Charles B. Blackmar, Sr., Former Judge Stanley Arnold Grimm

JUDGES AND COMMISSIONERS OF THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI: Family Court Administrative Judge Melvyn W. Wiesman, Family Court Commissioner Victora Mullen-Mckee, Associate Circuit Judge Joseph A. Goeke, III.

MEMBERS AND FORMER MEMBERS OF THE LAW FIRM OPPOSING PETITIONER IN MISSOURI COURTS AND THE FIRM: Susman, Schermer, Rimmel & Shifrin L.L.C., Frank Susman, Norton Y. Beilenson, Deborah Benoit

THE OPPOSING PARTY IN PETITIONER'S CAUSE IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI: Elaine M. Sturgeon

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REFERENCES TO DECISIONS BELOW

The opinion of the United States Court Of Appeals for the Eighth Circuit, Docket No. 99-3515, is unreported and is reproduced in App. A, 1a-4a. The memorandum and order of the United States District Court for the Eastern District of Missouri, Eastern Division is unreported and is reproduced in App. B, 5a-8a. An additional eighteen items involving Missouri Court opinions and orders in my case are reproduced in App. C through T, 9a-51a. All are unpublished except two opinions of the Missouri Court of Appeals, Eastern District: 984 S.W.2d 859 and 972 S.W.2d 574. An unpublished order disposing of a third Missouri appeal in my case is also included in the eighteen. Additionally, App. U through Y, 52a-85a, contains five companion Missouri opinions very relevant to my case. Three are from the Missouri Court of Appeals, Eastern District and are unpublished. Two are from the Supreme Court of Missouri: Slay v. Slay, 965 S.W.2d 845 and York v. Daugherty, 969 S.W.2d 223.

GROUNDS FOR JURISDICTION

The opinion of the United States Court of Appeals for the Eighth Circuit was issued on November 8, 2000. A timely petition for rehearing was denied by that court on January 8, 2001. (App. Z, 86a) An extension of time to file this petition was granted by Justice Thomas to May 8, 2001 (00A827). This Court has jurisdiction under 28 U.S.C. § 1254(1). The U.S. District Court had jurisdiction under 28 U.S.C. § 1343.

RELEVANT LAW

The following federal and state laws or sections thereof are used in argument and reproduced in App. AA, 87a-112a. The Table Of Contents provides greater detail.

U.S. Constitution Article XIV.
42 U.S.C. §§ 1983, 1985, 1986.
Federal Rules of Civil Procedure 8(b), (d).
Missouri Constitution Article V, §§ 5, 11, 18.
Missouri Revised Statutes §§ 487.030, 511.020, 512.020, 513.015, 521.010, 521.030, 521.870, 525.010, 525.130.
Missouri Rules 4.9.1, 73.01, 74.01(a), 85.02, 85.03, 85.08, 90.01, 90.13, 127.04, 127.05, 127.07, 129.02, 129.07, 129.08, 129.09, 129.13, Vol II-21.4.

STATEMENT OF THE CASE

A. Background

This case is brought under U.S. Constitutional Amendment XIV and 42 U.S.C. §§ 1983, 1985, 1986. It arises from post-divorce proceedings in Missouri courts. In my view, the case, and particularly the federal questions presented, have not been about divorce since 1997. Although I am quite dissatisfied with the results from divorce I intend to make no argument about those details except as peripheral ones become necessary for understanding of the case. The case is about unlawful cover up and deprivation of civil rights--mine and those of many others. When phrasing the federal questions, I intentionally omitted the environment of my case. This was to emphasize that the *same* deprivations *could* occur in almost any branch of law. Domestic relations litigants, a vast class involving most of the population, are no less entitled to the protection of law than smaller classes better known to suffer discrimination.

Many laws involved are of a type specifically made exempt to judicial interpretation or discretion. Moreover, I do not believe my case constitutes a "misapplication" of this law, unless that word in the Court's Rule 10 is intended to cover lawbreaking with intent and knowledge of the correct application.

In setting out the facts of this case, I am faced with a disadvantage because of the Court's Rule 14.2. I interpreted it in conjunction with Rule 24.3 precluding argument in the appendix. Under proper proceedings in lower courts an issue would be explained and ruled upon in the types of documents required by Rules 14.1(i)(i) and (ii). However, in a cover-up this does not occur. I desire the review of state court judgments but I cannot refer to those documents as envisioned by Rule 14.1(g)(i). Issues are not explained there. There are also no oral statements on the record.[1]

When I did not receive proper answers[2] to my federal original complaint and supplemented complaint or leave to join an additional defendant with knowledge of the corruption before being dismissed, I appealed to the U.S. Court of Appeals for the 8th Circuit with an appendix constituting ten spiral bound volumes totaling (1536) 8.5" x 11" pages of state court record. (For pro se appellants the U.S. District Court record was transmitted automatically.)

As I set out the facts bearing on the federal questions, I am going to attempt to specify where and how I raised them.[3] I am not likely to find all the occasions. I will contend that no lawyer anywhere has ever raised issues as often and to so many separate judges in a case as I have. This matter is at the heart of my case. The stonewall of silence on the issues by the judges leaves little doubt that my assertions of lawbreaking are valid, even before showing by law how they are valid.

---

[1] The U.S. District Court (App. B) comes closest to airing the case's dirty laundry by inferring I alleged my state court proceedings were "fixed."

[2] Fed.R.Civ.P. 8(b) and (d), App. AA, 91a-92a.

[3] Any references to raising the issues must be to the appendix material submitted to the 8th Circuit or, in some instances, the District Court record. To avoid confusion with the appendix to this brief (designated App.) I prefixed these lower court references with the designation "ca8" or, in case of the District Court record, "Doc.," which refers to that court's document numbering system. Even though theses sources are presently unavailable to the Court my opponents are able to comment on them.

My ex-wife divorced me on Jan. 9, 1992, with litigation beginning in Spring 1990, eleven years ago. On Jan. 3, 1996, I involuntarily lost my job of 25 years as an engineer with Monsanto Company.[4] Positive assets, including retirement accounts, were divided nearly equally, slightly in favor of my ex-wife. Almost all non-mortgage debt was assigned to me. Between these two dates I made timely payments of alimony (maintenance) and child support plus payments on a loan from my ex-wife. Although I was embroiled in near-continuous litigation, and except for an incident in late 1995 involving two respondents herein, I allege no lawbreaking during this early period.

B. Contempt Judgments

On Apr. 26, 1996, with an attorney I paid only $1,700 to, I filed a motion to modify my support obligations downward. Subsequently, before any trial, my ex-wife filed a motion for contempt, an execution on my homestead, and a cross-motion to modify. On Sept. 30, 1996, after an all day trail, I was ordered to jail for contempt of court and ordered to pay $10,130 of ex-wife's attorney fees. (App. S, 47a-49a) The motions to modify were not ruled upon that day. On Nov. 5, 1996 my homestead (of 18.5 years) was successfully auctioned by the sheriff. The next day, Nov. 6, 1996, both motions to modify were denied without giving any reasons.[5] (App. R, 45a-46a)

The conditions set for purging my contempt were to pay $4,732 of child support and maintenance arrearage and to obtain a health insurance policy for my youngest daughter that was alleged to be a requirement of the decree of dissolution. I tried to pay before entering jail, and twice thereafter. Finally a check (ca8MoAppLF 149) from my elderly mother was accepted on Oct. 9, 1996, rather than returned. Her money results from lifelong frugality.

---

[4] On May 25, 2001 I will be age 59. Ex-wife will be 55.

[5] The case is not about divorce related details. Much explanation is omitted. In return I ask the Court not to assume that there were extenuating circumstances justifying this harsh treatment or provoking the lawbreaking that follows.

Meanwhile, on Oct. 3, 1996, while in jail, I informed the Family Court by handwritten motion (stamped "filed Oct. 7, 1996") that the Family Court's finding regarding health insurance was in error. Compare App. S, 47a-49a, with App. T, 50a-51a, where the word "or" is operative.[6] I was released from jail on Oct. 17, 1996, after being served a second order to show cause on contempt. There was no admission by Commissioner McKee or Norton Beilenson, ex-wife's trial attorney, that there was an erroneous finding.

Honest mistakes or careless mistakes can be made. However, failure to admit to them, even if no corrections are planned, is not a "mistake." Furthermore, denial that there was a mistake, which occurred subsequently, is lying.[7]

There was a hearing Nov. 14, 1996 for me to show cause why I should not be jailed again for contempt. Deborah Benoit, my ex-wife's attorney, had prepared a judgment of contempt. (App. Q, 41a-44a) The handwritten paragraph 15 was developed in court. Paragraphs 3 and 15 concern the erroneous insurance requirement that all of my ex-wife's attorneys, Commissioner McKee and Family Court Administrative Judge Melvyn Wiesman (all not present) knew was incorrect for over a month. Ms. Benoit and Commissioner McKee were informed again by my attorney, Welborn, during that hearing. My home had been auctioned away nine days earlier. I had hope of recovering it. Because of that effort and some other reasons I decided I could not afford to be held in jail for an indefinite period (after all purge conditions were met)[8] as had occurred a month earlier. I signed the judgment. In Missouri courts this would be known as consent. I disagree.

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[6] The "...or to be liable for reasonable and necessary..." was lifted from RSMo 452.353.1. (Not in App.) The divorce decree was specifically not being modified. (App. R at 46a) On Oct. 11, 1996 my trial court attorney, R. Kip Welborn, raised the issue again specifically reproducing the decree requirement to Family Court Administrative Judge Melvyn Wiesman with a motion for rehearing. (ca8MoAppLF 150-151) Judge Wiesman recused himself as he is related by marriage to ex-wife's attorney, Norton Beilenson. (App. II at 134a) Similarly, the issue was raised a 3rd and 4th time by Welborn and a new attorney I engaged, Timothy E. Hogan, with motions for new trial, Oct. 30, 1996 and Dec. 5, 1996. (ca8MoAppLF 160-162, 167-175) Although it may have been raised earlier, the motion of Dec. 5, 1996 raised U.S. Const. Amend. XIV before any of the judgments I appealed from were made final in trail court.

[7] My ex-wife's third-string attorney, Deborah Benoit, made a denial orally on Nov. 14, 1996, to my attorney, R. Kip Welborn, and me, while reviewing the App. T paragraph visually, and to retired Judge Robert Hoester (not a party) and me orally on Sept. 20, 1997 in an appeal settlement conference. Frank Susman, ex-wife's lead attorney, denied the matter in writing in an appeal brief, ca8MoAppRespBrf 71736 at 2.

Relating matters chronologically caused me to devote more space than deserved to what is a minor part of my claim.[9] However, it was significant to me personally as the period was one of absolute terror and of enormous financial losses. I was effectively put on notice (accurate so far) that my opponents can break the law and that I would be powerless to do anything about it.

C. Intentional Stall

On or about Nov. 29, 1996 I hired an appellate attorney, Timothy E. Hogan, with my mother paying lump sums in advance for the work. Mr. Welborn had told me that there was "nothing more that he could do for me." On Feb. 14, 1997, Hogan filed App. EE, 122a-123a, a motion for commissioner to issue findings of fact, recommendation and judgment to replace App. R, 45a-46a, a denial of my motion to modify that gave no reasons. Hogan told me it was necessary for appeal and I did not disagree. Ultimately, with App. M, 33a-35a, on June 6, 1997, Commissioner McKee complied with this motion allowing the two appeals Hogan was paid to handle to proceed. There is an interval of about 4 months from Hogan's motion and 8 months from the hearing involved. This was an intentional stall of due process of law.[10]

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[8] Even if the health insurance purge requirement had been valid my youngest daughter, 19 years old at the time, entitled to child support but still legally an adult, was alienated and uncooperative with both her mother and me. Qualifying for a health insurance policy required her cooperation. It also required facilities not made available to me in jail during my previous stay (the ability to make non-collect phone calls to insurance companies). These non-monetary aspects created "no key to the jailhouse door" required in civil contempt of court. State Ex Rel. Roedel v. Yates 926 S.W.2d 521, 523 (Mo.App. E.D. 1996).

[9] The insurance was never obtained--a longer story, not of my doing.

1. Law - Findings and Recommendations. From Jan. 1, 1996 until Sept 1, 1998 Missouri Rule 127.04 (App. AA, 107a-108a) was in effect covering all my case's trial court activity. This rule specifically covers family court commissioners, that are appointed by trial court judges. It required, "notice of the findings and recommendations of the commissioner,..., shall be given to the parties." When it was replaced in 1998 by Rule 129.07, this part remained the same.

More generally, in Missouri Rule 73.01(a)(3) applicable to both judges and commissioners, there has been more game-playing with ways for a *judge* to guard his or her findings from public scrutiny. This rule was altered with the effective date being Jan. 1, 1997 in the middle of the period of discussion. Both versions are at App. AA, 102a-103a, and both say (approximately), "...and *may*, or if requested by counsel shall..." regarding the issuance of findings.

Consequently, all options available to a *judge* under Rule 73.01(a)(3) were not available to a commissioner because of Rule 127.04. Furthermore, § 487.030 RSMo (App. AA at 94a) had and still has the same requirement as Rule 127.04, relative to the parties of the case, in spite of its other change--a Mo. constitutional issue discussed below. Moreover, this entire matter is supported by a remand court opinion, Keck v. Keck, 930 S.W.2d 486, 489 (Mo. App. E.D. Oct. 8, 1996), authored by some of the judicial respondents of my case. It held inter alia, "The record required by the statute is not available for review on appeal." While this opinion relies upon prior versions of the statute, rather than rules, the relevant provisions were not changed throughout my case.

My point here is that delay over the above matter had severe repercussions to me later, while the respondents' own rules and common law were violated. While the matter is not entirely free of judicial interpretation Commissioner McKee agreed to comply in mid Feb. 1997.

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[10] These time intervals may not shock federal courts that produce independent research and detailed opinions and memoranda.

2. Failure To Disburse. On Feb. 10, 1997, I filed (pro se) a motion for disbursement to me (or alternatively to my mother) of the surplus funds from the execution sale of my homestead Nov. 5, 1996. Commissioner McKee, at the suggestions of opposing counsel, Norton Beilenson, put me through some gymnastics regarding proof that out-of-town holders of the deeds of trust were paid current on property no longer owned by me. (ca8MoAppLF 221-222)[11] These maneuvers involved two court hearings and a month of time for my motion to be heard and submitted on Mar. 6, 1997, but (as usual) not ruled upon. Earlier, on Jan. 30, 1997, Beilenson had garnished his $10,130 attorney fee award (App. GG, 128a)--not part of the execution judgment amount--from the funds without any proof regarding outside claimants nor were these lien holders notified by Beilenson during the execution sale proceedings or a separate earlier execution attempt on my homestead in late 1995. I find nothing in Missouri law requiring an execution judgment debtor to assist in the notification process of having his home sold at auction.

Next, I mailed 3 letters to Commissioner McKee and Norton Beilenson dated Apr. 2, 7 and 11, 1997, (ca8MoAppLF 226-229) pleading that my motion be granted, and noting various hardships the lack of funds were causing me in terms of prosecuting my case and the lost interest on the money.

On Apr. 17, 1997, I filed a petition for writ of mandamus from the Missouri Court of Appeals, E. D. (ca8MoAppLF 299-302) On Apr. 24, 1997 it was denied. (App. O, 37a-38a) However, it did provoke a judgment from Commissioner McKee earlier on the same date. (App. P, 39a-

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[11] The holder of a second deed of trust, wiped out by the sale, was my mother.

40a) This trial court judgment is mentioned in the denial of the writ by Judge Robert G. Dowd Jr.[12]

D. Execution Surplus Judgment

I had mentioned details in my petition for writ such as the $10,130 garnishment for attorney fees already applied to the surplus funds and that I was paid current on divorce decree support obligations. (The payments were made by my mother.) I also mentioned that a request by Norton Beilenson was made in a hearing of Jan. 9, 1997 for additional attorney fees of $6,700.00. These additional fees for ex-wife's attorneys were ordered paid from the surplus funds denied to me by Commissioner McKee's judgment of Apr. 24, 1997. They were for appeals that had been blocked since early December 1996. Although Judge Dowd may not have known that all the surplus had so far been expended for ex-wife's attorney fees, he did know that significant sums had or would be so expended. I had pled my desperation for money that belonged to me.

Although it was obvious to me, and to many outsiders and courthouse personnel (who will say nothing), that at least improprieties were being committed, I did not know the law at the time. I merely assumed that this illegal operation--a form of embezzlement--would turn out to be partially supported by conflicting and murky Missouri common law filled with unlimited discretion for the trial court judge. However I still contend that I suitably raised the issues by providing such information as the earlier Jan. 30, 1997 garnishment from the funds. Another scenario that I am not relying on but probably is true, is that the issue may have been very clearly raised by Timothy Hogan, my rogue appellate attorney. If so, he traded it for a leave to withdraw (described below), pocketing the money my mother paid for my appeals.[13]

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[12] The "order" received by the Court of Appeals from Commissioner McKee is defective legally on its face. Furthermore, as will become relevant to events about one year later, it was reviewed by an "Article V" judge.

After the judgment of Apr. 24, 1997, I told my mother to stop making the support payments required by my divorce decree. I filed Notice of Appeal on the matter. Then, the payments were steadily taken from the execution surplus funds as they became due until the fund was exhausted about a year later.

A few months later, while learning how to find case law for my briefs in Missouri courts, I learned that there was some law that could not be molded and reshaped for variable results. Naturally, I did not find this out in chapters of domestic relations law. When I did find it I was using very old volumes of Vernon's Annotated Missouri Statutes (V.A.M.S) and Vernon's Annotated Missouri Rules (V.A.M.R.) published by West. I used some of this old law in briefs not knowing how to find current opinions. Fortunately, I believe the law I used has been about the same for at least 100 years and the authority is still valid today. Today's latest pocket packet supplements prominently display the legal principles I learned, with additional authority from both before and after the appeal opinions in my case. I am referring to law on executions such as sheriff sales, garnishments and attachments. I suggest that any Missouri lawyer or judge would be hard pressed to explain ignorance of this law. Of course, so far, I have found that judges are not made to explain.

1. Law - Garnishments. Consider Smith v. Bennett, 472 S.W.2d 623, 628 (Mo.App. 1971) cited by the Mo. Supreme Court in State Ex. Rel. Eagle Bank & Trust v. Corcoran, 659 S.W.2d 775, 777 (Mo.banc 1983) "Garnishment is purely statutory proceeding in derogation of common law and strict compliance with all requirements formerly imposed only by statutes but now also enjoined by civil rules is essential to confer and support jurisdiction in a garnishment proceeding."

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[13] Hogan is not presently a respondent. I attempted to join him. Details are described in my 8th Cir. opening brief and in the District Ct. record.

Then review Missouri Rule 90.01 (App. AA, 106a) where it says, "all debts owed to defendant" and § 525.010 RSMo (App. AA, 99a) which has similar language. Now consider § 513.015 RSMo (App. AA, 96a) regarding executions in general and its words, "in conformity therewith."

This is well described by an 80 year old case, Endress v. Hadeler, 220 S.W. 1002, 1004 (App. 1920), which held, "Where a divorced wife had all of a parcel of land upon which she had a lien for alimony sold for the payment of the amount *then* due, the surplus became personal property to which her lien for alimony subsequently due did not attach..." Also (similar to the instant case), is, "While her execution called for only $140, she insisted on the Sheriff selling the whole tract of 800 acres..."

Pourney v. Seabaugh, 604 S.W.2d 646, 650, 651 (Mo.App. E.D. 1980), says, "Strict compliance with statutory requirements must be observed in garnishment action and no voluntary act of the garnishee, not in strict compliance with requirements of statutes, can constitute waiver of statutory prerequisites." Also, "..., judgment creditor need only direct or aid wrongful execution in order to be held liable..., and if it is done outside framework established by law then good faith of defendant is of no consequence..."

The most modern case I used while appealing the Apr. 24, 1997 judgment was Gardner v. Gardner, 830 S.W.2d 559, 562 (Mo.App.W.D. 1992). It says, "Execution can issue only on liability that is finally established and can only correspond with judgment on which it is founded." An older case, State et rel. Kennedy et al. v. Harris, 69 S.W.2d 307, 310 (Mo.App. 1934) says, "Right to judgment against garnishee depends upon showing that garnishee owes principal debtor, and creditor can claim no right where debtor himself could not maintain action against garnishee."[14]

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[14] I could not maintain my action against garnishee (Commissioner McKee). This concept is supported today with Wenneker v. Physicians Multispecialty, 814 S.W.2d 294, 296 (Mo.banc 1991).

State Ex. Rel. Eagle Bank at 778, § 525.130 RSMo and Missouri Rule 90.13 require interrogatories to garnishee. This happened once in my case, App. GG, 128a, when they could be answered truthfully. None were used thereafter.

The garnishee holding the execution surplus was the St. Louis County Circuit Court registry administered by the Circuit Clerk who was following direct orders from Commissioner McKee. In my opening brief to the Eighth Circuit I made some arguments attacking immunity, where I had found federal authority that might make other courthouse personnel (who bore me no malice) liable for the actions of Commissioner McKee.

One argument involved a redundant "order" shown at App. N, 36a. The order was not necessary given the "judgment" of Apr. 24, 1997. (App. P, 39a-40a) I surmise that when Beilenson and/or Commissioner McKee presented the judgment to the Circuit Clerk, Gene Overall, for payment, he or his attorney, Paul Fox, recognized the paradox of the judgment and asked for a substitute piece of paper.[15] The judgment denied me the surplus because it might belong to higher claimants and not belong to me yet gave part of the surplus to Beilenson because the money did belong to me and could thus be garnished or ordered to be paid to him.

Except for another example below of a disbursement by "orders," my money in the court registry was generally taken by means of routine garnishments. I do not believe the illegality of the situation changes by renaming the mechanism used. You cannot take money that is not owed to a judgment debtor to satisfy the debt. And, if it was owed to me it should have been paid to me to "conform" to the judgment of the sheriff sale execution. I was current on all obligations during the early months of 1997.

I believe everyone touching the situation realized that the "higher claimant" theory was a sham. The house had been sold almost six months earlier. However, IF a holder of a deed of trust had a claim to the execution surplus funds, it would take priority over subsequent claims for attorney fees in a domestic relations case. Dyche v. Dyche, 570 S.W.2d 293, 296 (Mo.banc 1978) The law firm respondents in the case have been stopped on more than one occasion by Dyche but they continue to misstate the same law at every opportunity.

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[15] Neither Mr. Overall or Mr. Fox are respondents. Until I learned about "immunity" it did not occur to me that they could be guilty. However, I could have certainly used someone in authority helping me stop a theft.

2. Law - Attachments. It may be recognized that what I have described above is similar to a pre-judgment attachment, which could be done legally under certain circumstances. At App AA, 96a-99a, I have included §§ 521.010, 521.030 and 521.870 RSMo on attachments. Also, at App AA, 104a-106a, are companion Missouri Rules 85.02, 85.03, 85.08 on attachments. Predominantly displayed at V.A.M.R. 85 is State ex. rel. Belle Starr Saloon v. Patterson 659 S.W.2d 789, 791 (Mo.App. E.D. 1983): "Prejudgment attachments are not favored, principally because they are subject to a constitutional attack on due process grounds."

There was no attachment. The conditions given in § 521.010 RSMo cannot be satisfied.

Missouri Rule 85.08 requires the posting of a bond by the judgment creditor in an attachment proceeding. It also drives home the exposure to liability of the judgment creditor and attorneys. There was no bond posted in my case. State ex. rel. Belle reversed for lack of adequate bond.

§ 521.030 RSMo and Rule 85.03 require an affidavit by the judgment creditor. There was no affidavit in my case. There is a document, App. FF, 124a-127a, dated Jan. 29, 1997, that I presume was intended to be some sort of substitute. This "proposed order" was never entered as an order but Commissioner McKee operated according to the instructions for as long as she could.

I know that there is a threshold of "triviality" that can be invoked to dismiss a § 1983 case. Parratt v. Taylor, 451 U.S. 527; Daniels v. Williams, 474 U.S. 327. My earlier story about being jailed over a dependent heath insurance order that did not exist probably seems a small thing. The "proposed order" discussed above may similarly look small.

However, there is clear legal procedure for a pre-judgment attachment carrying some risks for the judgment creditor and depriving the judgment debtor of something not yet due. Likewise, the trial court could have officially modified my dependent insurance requirement, which in turn might have had disastrous consequences if you knew the entire story. That these clearly known legal procedures were violated is not discretion. It is clear lawbreaking.

This can be distinguished from the callous judgment or neglect of some prison employees in Parratt or Daniels. My deeds are by persons with the power to make heavy duty discretionary judgments irreparably affecting people's entire future lives for better or worse, usually worse, in my observations.

E. Attorney Withdrawal

My next story is about how my prepaid appellate attorney in state court, Timothy Hogan, was taken from me against my will. When I hired Hogan on Nov. 29, 1996, I had casually mentioned that I was attempting to settle the case and that the lump sum fees paid to him were his, should that occur.[16] At a hearing on Jan. 9, 1997, in conjunction with motions for attorney fees on appeal paid by the opposite party, Hogan presented 130a-131a of App. HH, 129a-133a, as a court exhibit to Commissioner McKee. As this document has some lack of clarity, App. CC and DD, 119a-121a, are letter excerpts from Hogan demonstrating his understanding of his employment obligations. We began to quarrel during Jan. 1997.[17] I wanted him to concentrate on the appeal work. He wanted to concentrate in other areas he thought to be a shortcut in satisfying his contract.

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[16] It did not occur to me that he would not recognize a fundamental truth of legal battle. If you desire to settle you do NOT relax pressure toward the other side. That is, if you plan to appeal, you keep doing that.

[17] I described Hogan in greater depth in my CA8 Petition For Rehearing.

As the months went by, the dispute grew larger. The delay between the Sept. 30, 1996 hearing and the filing of the first brief, ca8MoAppOpngBrf 71736, July 15, 1997 was 9.5 months. I blame Commissioner McKee and Beilenson for this delay. However, I recognized that Hogan was playing into their hands. I insisted that Hogan stick to our agreement and start appeal work, leaving any settlement negotiations and trial court affairs to me.[18]

On the other hand, I needed an appellate attorney. Hogan was the only one I had and he was fully paid to do the job, should I be placed back into jail. Hogan was not the best but he was capable of doing appeals. I could not afford to change attorneys, even if Hogan refunded fees.

On July 7, 1997, Hogan filed identical Motions for Leave to Withdraw (ca8Apdx 220-223) with both the Family Court and with the Missouri Court of Appeals. The Family Court Motion is App. L, 30a-32a. My Objections were ca8Apdx 224-225, also served on Commissioner McKee. Hogan was granted leave to withdraw by Commissioner McKee on July 11, 1997 (App. L at 32a, MoAppLF 245-246). I was not present due to improper, ambiguous hearing notification. (Missouri Rule,Vol. II, Rule 21.4 (b) at App. AA, 112a and ca8Apdx 240.) Hogan had informed me of a hearing by a "judge" instead of a "commissioner." I assumed that Chief Judge Lawrence Crahan of the Missouri Court of Appeals was finally going to reprimand Hogan for his professional conduct infractions and that I was not invited. Until that time, all other noticing of hearings had been by more formal procedure in my cause. A one day notice time had never been permitted to me by Commissioner McKee. Furthermore, Thursdays were the "repetitive docket" days for my case in Family Court. July 11, 1997 was a Friday.

On July 9, 1997, Norton Beilenson filed a strange "Motion for Disbursement of Funds From the Court Registry." (MoAppLF 249-250.) This was two days after learning of

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[18] Ca8MoAppLF 226-227 defined my representation in trial court.

Hogan's efforts to abandon me and one day before the normal repetitive docket day in Commissioner McKee's Court. Hogan was served with this motion, not me, whereas Beilenson and McKee had been instructed otherwise in writing. (ca8MoAppLF 226-227) I discovered this activity in the Circuit Court's file months later.

The motion was strange because my money held in the Court Registry had previously been extracted by means of routine garnishment. Later, there was a return to routine garnishments. The motion resulted in 3 simultaneously issued "orders" (App. BB, 113a-118a) for disbursement of funds with some garnishment numbers crossed out of them manually with pen. These garnishments were already being processed routinely.[19]

It seems reasonable to me that Hogan had secretly tumbled to why Beilenson's and Commissioner McKee's handling of the surplus funds from the sale of my homestead was illegal.[20] I surmise he confronted Beilenson informally about it. At the same time, Beilenson and Commissioner McKee were aware that there was discord between Hogan and me. They wanted my appeals blocked and had not concealed their sentiments. They thought that if they assisted Hogan in withdrawing they would stop my appeals plus obtain their freedom to continue to utilize all the surplus sale funds for future judgments and attorney fees. I surmise a deal was struck. Hogan's "notice" to me (ca8Apdx 240) described above was faxed at 4:48 pm, July 10, 1997, the repetitive docket day, regarding the Motion to Withdraw hearing for the following day.[21]

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[19] See App. II, 134a-135a. Compare G104951, G105066, G105209 on June 3, June 18 and July 9, 1997 to the same numbers in App. BB, 113a-118a.

[20] An attorney would realize there was inflexible law when I did not.

[21] Whether Hogan had threatened Beilenson earlier about the surplus fund retention-garnishment legal flaws, or whether they simply had a good laugh together about it, or whether Beilenson dreamed up the motion to disburse on garnishments (already being processed) just as an excuse to offer Hogan the deal is not too important.

Under this scenario the conspiracy would have been firmed up between Hogan, Commissioner McKee, and Beilenson in the Thursday, July 10, 1997 hearing in time for Hogan to get back to his office and fax me.[22] I do not know the precise point Chief Judge Lawrence Crahan of the Missouri Court Of Appeals joined this particular conspiracy. See App. JJ at 136a (July 24, 1997) for a denial of the motion to withdraw "filed" by Hogan in the Missouri Court Of Appeals on July 7, 1997. Making the situation more irregular was that it was not mailed to me until Aug. 19, 1997.[23] If Judge Crahan denied Hogan's motion earlier he did nothing, such as reversing Commissioner McKee's granting of the motion, or any further orders to Hogan. Judge Crahan was fully apprised of the situation by my motions denied in the other entries of App. JJ.

Hogan has refunded no attorney fees paid to him. Hogan failed to hand over adequate files for appeal. Four days after Hogan's withdrawal, I had to meet the notice of appeal deadline in Appeal No. 72855 on the denial of my motion to modify--the most important appeal.[24]

On Aug. 8, 1997, I filed a second petition for writ of mandamus to the Missouri Court of Appeals to compel disbursement of the remaining surplus funds from the sale of my homestead. Court of Appeals No. 72962. I pointed out that I was unqualified to handle my appeals and needed the funds to obtain an attorney to replace Hogan. I also pointed out that the court from which I appealed should not have the right to thwart the appeals, and that I was being denied due process of law as a consequence of the Family Court actions and Missouri Court of Appeals inactions. It was denied Aug. 24, 1977. (App. K, 28a-29a)

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[22] The fax machine used was at another business adjacent to his office.

[23] I have the postmarked envelope. (ca8Apdx 318) Of all my numerous rulings from Judge Crahan, no others were decided late or mailed late.

[24] Although I had no advance assurance that he would do so, on July 15, 1997, Hogan did file one brief (ca8MoAppOpngBrf 71736)--contempt of court judgments, my least important appeal. As the issues of my 3 appeals overlap, Hogan raised the following issues at pages: dependent health insurance (18-19, 28-29), inadequate findings and recommendations (20-21, 30-31), misinterpretation of $127,000 pension (22-24, 32, 40-41), $10,130 attorney fee award (26), surplus execution funds (26-27).

F. State Court Appeals

On Nov. 17, 1997, ex-wife's lead attorney, Frank Susman, filed his response brief on Appeal No. 71736, contempt of court judgments.[25] His brief asked that the appeal be dismissed because I had purged myself of contempt to get out of jail. Earlier case law said that this rendered an appeal "moot." On Dec. 17, 1997 I filed a reply brief to the above--my first brief writing.[26]

On Jan. 14, 1998 the Missouri Court of Appeals, in an order written by Chief Judge Lawrence Crahan, dismissed appeal No. 71736. (App. J, 24a-27a) This order restated the reasons cited in Frank Susman's response brief. The order addressed none of the "irregularity" issues raised in my two appeal briefs. For example, Commissioner McKee did not order in the sense of modifying the divorce decree. (App. R at 46a) She ordered compliance with an erroneous finding of fact regarding my daughter's health insurance (App. T at 51a). Furthermore this portion of the order, to which most of my real and threatened incarceration was attributable, was not complied with, i.e., no purge. The order contained a footnote mentioning some pending Eastern District Appeals, Slay v. Slay, Gray v. Gray and Bell v. Bell transferred to the Mo. Supreme Court. The note was couched in terms of Missouri

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[25] On Sept. 19, 1997, there was a belated appeal settlement conference with retired Judge Robert G. Hoester (not a respondent). Judge Hoester indicated that my offer to use retirement funds to pay every thing asked, i.e., ex-wife's support for life, in exchange for an iron-clad guarantee that litigation would end forever, was reasonable and workable. On Oct. 6, 1997, ex-wife's attorney, Beilenson, turned it down. Under normal rules there would have been 1 month, rather than 4 months, between these briefs. But, the rules were suspended for the settlement conference, which was scheduled, canceled with cancellation protested by me, and then re-scheduled.

[26] Ca8MoAppReplyBrf 71736 deals predominantly with "divorce details," however I did raise the issues of dependent health insurance (p. 2-, 12-15, 17-19, 22-23) surplus execution funds (p. 32), pension (p. 28-29), and a due process issue (p. 30) explained in U.S. Dist. Ct. Doc. 1, ¶ 115.

Rule 74.01 and seemed of no significance to me, a non-attorney. (App. J at 26a)

On Jan. 27, 1998, I filed a Motion To Vacate Order Of Dismissal, Or In The Alternative, Motion For Rehearing on Appeal 71736.[27] It was denied on Feb. 10, 1998. (App. I, 22a-23a) On this appeal (only) I did not file an application to transfer to the Supreme Court of Missouri. I had to sacrifice this appeal to meet deadlines on my more important appeals.

Frank Susman and I filed all subsequent briefs in the remaining appeals No. 72478,[28] surplus execution funds, and 72855.[29] Both appeals were dismissed (App. E, H, 13a-15a, 20a-21a) based upon Slay v. Slay (Mo.banc) discussed below.[30] I filed Motions for Rehearing and Application for Transfer (to the Missouri Supreme Court) with the Missouri Court of Appeals-Eastern District, and subsequent Applications for Transfer with the Supreme Court of Missouri. All four pleadings were denied.[31] (App. C, D, F, G, 9a-12a, 16a-19a) I received no court acknowledgment in state court proceedings that actions I asserted to be unlawful had even occurred.

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[27] This motion, ca8Apdx 414-416, cited much case law and raised the matter of not addressing the real issues of the appeal plus my lack of purge on the insurance issue. An earlier letter to Chief Judge Crahan, ca8apdx 403-408, discussed the same in greater depth.

[28] Ca8MoAppOpngBrf 72478 at p.14-36 extensively raised my argument regarding garnishment law and the surplus execution funds, quoting from all relevant case law used herein (and more) except Wenneker, State Ex. Rel. Eagle Bank, and State ex. rel. Belle. It includes the issues associated with App. GG, App. BB, App. N given App. P, and App. L--Hogan's withdrawal circumstances, (p. 26-30). Due Process issues were raised at p. 35-36, 56. It also re-raised many issues of appeal 71736.

[29] Ca8MoAppOpngBrf 72855 (p. 23-29), as well as ca8MoAppReplyBrf 72478 (p. 5-11) raised the issues and inapplicability of the recently issued Slay v. Slay (Mo.banc) that I have raised herein quoting more extensively from the conflicting constitutional provisions, statute, and court rules. The 72478 Reply also pointed to the review of Commissioner McKee's 04/24/97 flawed judgment during my first petition for mandamus (p. 12-15), McKee's stalling tactics, and due process deprivation (p. 16-19). The 72855 Reply raised due process issues (p. 13, 17, 29, 38) and re-raised earlier issues. e.g., delay in issuing findings and recommendations (p. 12, 35, 38-40).

[30] Of all three appeals, Hogan had written one brief of 45 pages. I wrote five briefs totaling 238 pages, not counting significant post dismissal work. At least a year of full time work was expended by me on state appeals.

G. Common Law Withdrawing the Right of Appeal

1. "Sua Sponte" Opinions. On Nov. 25, 1997, The Missouri Court of Appeals, E.D. transferred 3 opinions, App. W, X, Y, 66a-85a, to the Supreme Court of Missouri. The chief judge of the E.D., Lawrence Crahan, and several other judges there were aware by then of the issues of my 3 appeals, even though all briefs had not yet been submitted.[32] I am not contending that the cover-up of my case was the sole reason for their actions. However, the dismissal of my first appeal (App. J, 24a-27a) mentions the 3 opinions.

All these opinions are couched in terms of Missouri Rule 74.01 (App. AA, 104a), which is referenced 23 times.[33] The Missouri Court of Appeals purported to raise its issue sua sponte. However, In Re Marriage of Bloom, 926 S.W.2d 512, 515 (Mo. App. S.D. 1996) raised an almost identical issue 18 days after the effective date of offending statute § 487.030 (App. AA, 94a-95a) and 17 months before the attack of sua sponte at the Missouri Court of Appeals, E.D.[34]

Of the 3 opinions, Bell v. Bell at 69a correctly states, "Also, Section 487.030.2 recites that parties to a cause of action heard by a commissioner *are entitled* to file with the court a motion for a hearing by a judge of the family court." (Emphasis added.) However, Gray v. Gray at 79a and Slay v.

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[31] In these post-dismissal pleadings I generally raised the same issues as my complaint to U.S. District Court (Doc. 1) and the federal questions 1 and 3 herein. I raised violations of due process but I raised them to conspirators already guilty, at least of failure to prevent.

[32] This was because they had been touched on in the briefs of Appeal No. 71736 and various other pleadings I had submitted by then.

[33] In the resulting Missouri Supreme Court opinions, Slay (Mo.banc) and York v. Daugherty, nothing is said about Rule 74.01. Rule 73.01, just above 74.01, is in conflict with the Slay (Mo.banc) "concurring in result" opinion and York.

[34] In Missouri, only the Mo. Supreme Court can declare a statute unconstitutional, consequently I believe it likely that Bloom was brought to its attention promptly.

Slay, at 84a issued the same day, say differently, "*To obtain an appealable judgment* after a commissioner has entered findings and recommendations under Rule 127 and Section 487.030.1 (1996 Supp.), *a party must file a motion for rehearing as set out in both Rule 127 and the statute,* and obtain an order signed by a judge." (Emphasis added.)

On Mar. 24, 1998, the Missouri Supreme Court opinion concurring in result that accompanied Slay v. Slay (Mo.banc) went further at 64a, "However, section 487.030.2 gives a statutory right to seek timely review of the commissioner's decision by requesting a hearing by an article V judge, and *failure to seek such a review is a waiver of any further judicial review of the issues decided.*" (Emphasis added.)

Except for Bell v. Bell, this constitutes a "ratcheting" of change in the common law designed to conceal wrenching change in the right of appeal. The statement in Gray v. Gray and Slay v. Slay is an outright lie unless the phrase, "as set out in both Rule 127 and the statute" is taken to modify only the words "motion for rehearing," which would not be a natural interpretation. Furthermore, as discussed below, the ratcheting reached the point that filing the motion did not obtain an appealable judgment.

Why would a court of law wish to practice the type of deception normally associated with certain unscrupulous sales people and swindlers? How do you suppose the E.D. viewed its jurisdiction while changing the right of appeal? Maybe it viewed it as a "clear absence of jurisdiction." Bradley v. Fisher, 13 Wall (80 U.S.) 335, 351 (1872).

2. Missouri Supreme Court Opinions. See Slay v. Slay, 965 S.W.2d 845 and York v. Daugherty, 969 S.W.2d 223 reproduced at App. U, V, 52a-65a. The lies and deception above pale in comparison with those of York v. Daugherty. (App. U, 52a-58a) York terminated the rights of all parties subjected to judgments entered by family court commissioners during an approximate 2 year period. Almost every word of the opinion is absurd. However a summary might be, "One who fails to timely take advantage of that mechanism has waived any objection to the commissioner's authority, findings and legal conclusions and a party who assumed the benefits or burdens of such "judgment" is estopped from attacking it, as if sec. 487.030 were constitutional in its entirety."

"Mechanism" refers to the "motion for rehearing" I have discussed earlier. The Court will easily recognize that the terms, "waiver" and "estoppel" are heavily abused. No family court litigant did any waiving or estoppel unsupported by their signing an agreement, particularly those appealing as I was.[35] Although there are "burdens and benefits" in almost every type of case, I do not see how that is relevant. I, having a motion to modify completely denied, received no benefits. Also, I have explained below the requirements that are specifically NOT necessary to preserve a matter for appeal. I was not appealing the constitutionality of § 487.030 RSMo, nor was anyone else in the state except (probably) a Mr. Keck discussed below. I was appealing more specific issues, some of which were not just abuse of discretion or misapplication of the law, but were intentional lawbreaking.[36] The fact that one more law, the Missouri Constitution, was violated should fortify my right to appeal rather than eliminate the right. York v. Daugherty was a well-executed production with superb casting and advance news media coverage. Nevertheless, I seek the total or partial reversal of York, based upon deprivation of due process of law and for offending the most fundamental principles of both logic and law.[37]

All 3 parties in the York v. Daugherty opinion are lawyers. York and Stubbs' divorce decree was the result of amicable settlement, and thus satisfactory to them.[38] Their

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[35] While scouring databases for 1895 Iowa cases, the Mo. Supreme Court passed over its own wisdom, Wenneker v. Physicians Multispecialty, 814 S.W.2d 294, 297 n. 6 (Mo.banc 1991).

[36] Under Mo. Rule 4.9.1, "belief" and "knowingly" may be inferred from circumstances. (App. AA at 100a, 101a).

[37] I also made this request to the U.S. District Court.

[38] This information comes from a St. Louis Post Dispatch news article by Virginia Young of May 22, 1998 interviewing Ms. York and Mr. Stubbs. (ca8Apdx 464) Also interviewed was Judge Edward "Chip" Robertson (a

rights of appeal were voluntarily waived at the divorce. I do not consider it fair play (or due process of law) to select tame parties that care little for the result of a landmark court opinion, while directing earlier, and less docile, (and multiple) parties into the dead end street of dismissal.

H. Law Securing Right of Appeal

An appeal on the merits is a matter of right at the Missouri Court of Appeals. It is secured by § 512.020 RSMo (App. AA, 95a-96a). It is also further secured by the Missouri Constitution and in a fashion that seems to have anticipated the 1998 legal chicanery. See App. AA, 92a-94a. Art. 5 § 5: "The rules shall not change... the right of appeal." Also, "The court shall publish rules... but no rule shall take effect before six months after it's publication." Art. 5, § 11: "...want of jurisdiction shall not be grounds for dismissal, and the proceeding shall be transferred to the appellate court having jurisdiction thereof." My Appeals No. 72478 and 72855 were dismissed "for lack of jurisdiction." (App. E, H, 13a-15a, 20a-21a) Also, see Art. V, § 18.

1. Law - To Preserve Right of Appeal. § 487.030 RSMo (App. AA, 94a-95a) addresses a "rehearing" in family court. Note the "are entitled" regarding filing for a motion for rehearing.[39] Missouri Rules 127.04, 127.05, and 127.07 interpret this statute. (App. AA, 107a-109a) Note the word "may" in Rule 127.05 regarding filing a motion for rehearing. There is a difference between the statute, perhaps accidental, and Rule 127.04. The Rule uses the phrase, "right of rehearing." However, Rule 127.05 below, like the statute, makes it clear with the words "sustain or deny" that there is no "right" to a rehearing.

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respondent) of the Supreme Court of Missouri. Judge Robertson said judges need a philosophical underpinning for such a move (making Slay (Mo.banc) apply prospectively), unless they act "because we're the 800 pound gorilla" and can do anything. Judge Robertson resigned shortly thereafter to "return to private practice."

[39] These same words also appear in the current § 487.030 RSMo.

These provisions of Rule 127 remained in effect throughout trial court activity in my case until Rule 127 was replaced by Rule 129 (App. AA, 109a-111a), effective Sept. 1, 1998. Note the continued use of the word "may" in Rule 129.13(a). Filing for a motion for rehearing clearly remained optional. Also, "right" to a rehearing is still absent in Rule 129 because the judge may require modification of the commission's recommendations without clearly "rejecting" them. This matter was defined in Rule 127.07 and is now in counterpart Rule 129.09, with the new rule providing even more flexibility NOT to have a rehearing.

Now examine Missouri Rules 73.01(a)(4) and (b). (App. AA at 103a). There are words, "may but need not" regarding a motion for a new trial. Lower, the matter is made very explicit: "neither a motion for new trial nor a motion to amend the judgment is necessary to preserve any matter for appellate review."

The truth is that a party simply was not going to obtain a rehearing then and the same is true today.[40] I had planned to prove this with discovery in U.S. District Court. The explanation is given in State Ex. Rel. Kramer v. Walker, 926 S.W.2d 72, 75 (Mo. App. W.D. 1996). Other cases spanning Missouri's appellate districts that discuss the now infamous motion for rehearing are State Ex. Rel. Roedel v. Yates, 926 S.W.2d 521 (Mo. App. E.D. 1996) and In Re Marriage of Bloom 926 S.W.2d 512 (Mo. App. S.D. 1996).

The point I have made here is that the primary underpinning of the "sua sponte" opinions and York, the motion for rehearing, or an actual rehearing, before either a judge or commissioner, was optional under both the family court statutes and rules and the broader rules of civil procedure.[41] After York, it still is.

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[40] The only effect is to delay final judgment causing appeal delay, an aspect used against me.

[41] It was also explained to me by Mo. Court of Appeals staff that it was only with a trial by jury, where post verdict motions were required.

2. § 487.030 Defect Known, Judicially Designed, Upheld. § 487.030 RSMo (App. AA, 94a-95a) had undergone near annual amendment since its enactment in 1993. Effective May 15, 1996, just in time to victimize me, it underwent a new change described by Roedel at 523: "the findings and recommendations of the commissioner shall become the judgment of the court when entered by the commissioner." Bloom, handed down 18 days later, discussed a Missouri constitutional question at 515 involving a defect of the earlier 1995 version of § 487.030. The defect was that it was "possible" for a commissioner to enter a judgment that only a judge was permitted to do under Article V of the Missouri Constitution. Although not mentioned, but probably on the mind of the author of Bloom, the 1996 version of § 487.030 had changed the statute to make the "possibility" nearly certain.

Although I do not have all the facts--facts I wished to explore with discovery in U.S. District Court, I can recall from news articles in late 1992 and 1993 that a new divorce court system was planned. The news articles described one or more committees that had been formed involving judges, divorce attorneys and private citizens, probably all from what I refer to as the divorce industry. However, I do have one fact. When the unconstitutional 1996 version of § 487.030 was passed, the only parties outside the Missouri legislature testifying on behalf of the bill were Circuit Court Judges Christine Sill-Rodgers, Jackson County (Kansas City); Judge Dennis Smith, St. Louis County plus the Missouri Coalition Against Domestic Violence. There was no opposition testimony. A lone Senator Klarich of St. Louis County, voted against it out of 174 legislators. [42]

I include this information in support of what I believe would prove true if examined in depth. The system of commissioners handling messy divorce related cases, beneath judges but paid equally, was conceived and designed by the judicial branch of Missouri's government, not the legislative branch. The system is self-serving. Judges would then supervise, rather than struggle alone with difficult issues, and be able to feign ignorance of due process violations and outlandish decisions with the concept of allowing wide discretion to the judicial official directly receiving evidence and testimony.

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[42] Except for Klarich's identity, this information is found at www.house.state.mo.us, Past Legislation-1996 Session-1996 House Bills-HB1619-Bill Summaries. Klarich did not respond to my e-mail.

I. Tool 74.01(a) & Sample Cases of Others[43]

Lest the Court believe that my case is simply an aberration from the norm or that I had some type of post-dismissal state recourse consider a couple of outside sagas. These are samples of what I (roughly) guess to be at least 20 cases statewide but do not know. I do not believe any case escaped termination, even those represented by top attorneys. One is Keck v. Keck. Keck's 3 results at the Mo. Court of Appeals, E.D. are 930 S.W.2d 486 (10/8/96), 969 S.W.2d 765 (5/19/98) and 996 S.W.2d 652 (5/11/99). There was a 4th result at the Mo. Supreme Court on Oct. 24, 1997, cryptically described in the opinions above. Another case is Interest Of J.H. 966 S.W.2d 385 (Mo.App. W.D. 1998).

Note that the "sua sponte" cases on Nov. 25, 1997 in the Mo. Court of Appeals occurred 32 days after Keck raised the constitution at the Mo. Supreme Court. Also note that in both Keck and J.H. a motion for rehearing was requested. Refer to the footnote of J.H. at 387 where Jay Daugherty, counterpart in Jackson County to respondent Administrative Judge Melvyn Weisman, is involved. Administrative judges are the supervisors, performance evaluators and advisors of commissioners. Finally, please review the excerpt at App. KK, 138a-142a, on some uncertainty with Missouri appellate practice, just a sample of a larger morass.[44] Even if Rule

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[43] Page limitations significantly reduced this argument.

[44] It is digression but in App. KK, 138a-142a, you will also find Chromalloy American v. Elyria Found. I used a similar case instead, Ampleman v. Schweiss, 969 S.W.2d 862, holding the same. The 3 judge appeal panel of Ampleman also dismissed my Appeal 72478 (App. H, 20a-21a) 7 days earlier.

74.01(a) violation is not intentional, the penalty for trial court incompetence does not belong on the backs of litigants or their attorneys.[45]

Another sample case is from a Michigan U.S. District Court.[46] The opinion is filled with jurisdictional minefields yet it grants declaratory relief in a domestic relations case.

REASONS FOR ALLOWANCE OF CERTIORARI

I am asserting that no de facto corrective process was afforded to me by Missouri Courts. The Court held in Moore v. Dempsey, 261 U.S. 86, 90, 91 (1923) and several other habeas corpus cases that the absence of some form of corrective process when a violation of the U.S Constitution is alleged contravenes the 14th amendment. In one of those cases,

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[45] The solution for a Missouri Supreme Court manufactured problem that has churned millions in attorney fees and untold grief to parties could be solved with the use of a form with court caption and the word "judgment" preprinted on it. In J.H., the mother was having her parental rights terminated forever and likely represented by some type of an overworked welfare lawyer that cannot afford Missouri Court games. The Mo.Const.--Bill Of Rights--Article I, § 2 (not in App.) says in part, "that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design." The judicial branch of Missouri's government fails.

[46] Tindall v. Wayne County Friend Of Court, 9/30/99, 98-CV-73896-DT. Being unpublished and discovered very recently, I have lodged ten copies with the Clerk separately from the App. I see great similarities with my case but also differences. Tindall did not pursue (properly) relief in state appellate courts. I traded a large piece of my life to do so but Tindall had greater success. A state appeal process is a key consideration in federal court abstention. My comment is that when an illegal trial court practice is blatant (unconcealed), then the appeal process should be suspect because of likelihood that state appellate courts have condoned the illegality or designed it. I raised the pseudo-Missouri appeal process to federal courts in Doc 1-¶¶ 5, 20, 29, 41, 45-47, 56, 58-96, 116-117, 120, 124; Doc 33-¶¶ 145-146, 148-151, 157-161, 169, 171, 174-184; Doc 20-¶¶ 19, 21-38, 45-47, 50, 51, 52, 55, 65, 72, 75, 78-81, 83-85, 87-90, 92; Doc 31-¶¶ 7, 9-11, 15-16, 21; Doc 37-¶ 15; 8th Cir Opng Brf-¶¶ 10, 25, 27, 28, 48, 58, 61, 62, 81, 83, 94, 100.

Mooney v. Holohan, 294 U.S. 103, 106 (1935), the Court linked civil case considerations to the criminal case.

Recognizing that the Court is not in business to correct wrongs to individual parties I have suppressed details regarding my decade of litigation and my personal desperation in favor of showing the larger picture I see. The Court should not assume that I am not desperate nor should the respondents assume that I am going away anytime soon. It is not fanaticism that drives me nor is the prospect of collecting damages much of a factor.[47] Meddlesomeness is not my nature. I did not "entrap" the respondents. I do not want to be a lawyer--no offense intended.[48]

I have argued that this case is not "domestic relations" and like Ankenbrandt v. Richards, 504 U.S. 689 (1992), it is not. However, it did arise in that field of law. That is a reason that I believe my civil rights questions extend nationally. The federal government is now deeply involved in enforcement of family court judgments--a power that means the greatest "color of law" on the planet applied to highly subjective decisions.[49]

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[47] Much is owed to me but I do not know where to purchase youth.

[48] I want to be an engineer in my specialized (safety related) field. In late 1996 I was taught otherwise. I have been unemployed (except as a more-than-full-time lawyer for myself) since Jan. 3, 1996. Specialists are not very fashionable today in the globally competitive companies where I need to work while "early retirement" is. I will not be able to work as a permanent salaried employee in the future, even without the continual court interference that makes employers question (rightfully) my ability to respond quickly. I also do not want to be jailed, which is extremely fashionable in family court here. My last bout was for 5.5 months where part of my (once divided) retirement account (untouched by me) was garnished without me learning of the legal grounds from my cell. The legal grounds are almost certainly not legal grounds but I cannot win in a state court system where verdicts come before evidence. I face more if the threat of this suit is dismissed. Jail is the least of my fears.

[49] The judgments are based largely in common law rather than strictly defined statutes. Naive beliefs are substituted for evidence. While I believe most judgments are irresponsible and are taking a terrible toll on all parties and society at large, I have presented no evidence here. In the instant case,

While I believe in the federal system of states' rights and two parallel court systems--as a protective mechanism against abuse by one or the other--I also believe that "when the cat is away the mice will play." Federalism, coupled with the Court's doctrine of judicial immunity, has produced that in my case. I ask what states' rights means. Does it mean that a handful of persons, drenched in deceit, be permitted to seize power away from the other two branches of government? Does it mean these persons are not only immune from tort lawsuits, but are free to openly operate above the law? Does it mean zero accountability? See Dennis v. Sparks, 449 U.S. 24, 31 (1980).[50]

I brought this case because no Missouri lawyer can. Obviously, it will not be a comfortable case for the Court. Nevertheless, the Court is the ultimate defender of the U.S. Constitution. Please recognize what we have here. It is not

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I am relying upon the defined procedural law involved--*due process*, in my view. That reliance destroyed my life and harmed others, including my children, my mother and my ex-wife. I did not know then that my case was sufficient threat to require cover-up. I did not know about "jurisdiction." I did not know that some due process is not worthy of guaranteed receipt, even though its absence can change the entire result of a case. See Tindall at 17, quoting Levine v. Torvik, 986 F.2d 1506, 1515 (6th Cir. 1993) about the "constitutionalizing of every state rule." Yet, the Court has held deprivation of due process when law, as written and obeyed, will cause it. The Court has held substantive due process violation when no law is involved. The Court overlooks deprivation that occurs when *other courts*, trusted (with vast discretion) to uphold the law, write law that can be drawn or not drawn like a gun to achieve unlawful results. This occurs in an arena reeking with McCarthyism style public sentiments and methods. The criminal justice system's power over life, liberty and property interests is minuscule relative to this larger arena. Perhaps, the Court's abstention is associated with a view that errors and excesses, considered "not administratable," still favor the helpless, such as children. That view is incorrect, as could be shown by my case and many others that do not reach the light of day.

[50] Also see Dubose v. Kelly, 187 F.3d 999, 1003,1004. It does not matter whether a proper appeal process would have changed results of my case nor whether the case's "fix" was motivated by avarice or favoritism.

politics. It is lawbreaking. Protecting the "integrity of the courts" is not warranted. Comity is owed to citizens, instead. It was my bad luck that the cover-up extends to the Supreme Court of Missouri. This is simply the nature of illegal cover-ups where low-level but well-connected people draw-in higher level people. I am dismayed that family court commissioners have more effective, if not real, immunity than either President Nixon or President Clinton.

Lifting some language from the Court's Rule 10(a), I say that the respondents have "... far departed from the accepted and usual course of judicial proceedings." I pray this departure not be sanctioned under any legal doctrine.

/s/______________________________
Charles H. Sturgeon, *Petitioner, pro se*
2125 Cherry Cove Court
Maryland Heights, MO 63043
(314) 434-0793

May 7, 2001.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[Filed November 8, 2000]

No. 99-3515

Charles H. Sturgeon,)
Appellant,)
)
v.)
)
Duane Benton, Chief Justice; Ann K.)
Covington, Judge; John C. Holstein, Judge;)
Stephen N. Limbaugh, Jr., Judge; William)
Ray Price, Jr., Judge; Ronnie L. White,)
Judge; J. Wolff, Judge; Edward D.)
Robertson, Jr., Former Judge; Robert G.)
Dowd, Jr., Chief Judge; Lawrence G.)
Crahan, Judge and former C. J.; Clifford)
H. Ahrens, Judge; William H. Crandall,)
Jr., Judge; Kathianne Knaup Crane, Judge;)
Robert E. Crist, Sr., Judge; James R.)
Dowd, Judge; Gary M. Gaertner, Judge;)
Mary Kathryn Hoff, Judge; Kent E.)
Karohl, Judge; James A. Pudlowski, Judge;)
Mary Rhodes Russell, Judge; Paul J.)
Simon, Judge; Richard B. Teitelman,)
Judge; Charles B. Blackmar, Sr., Former)

Judge; Stanley Arnold Grimm, Former)
Judge; Melvyn W. Wiesman, Family)
Court Administrative Judge, Division 19;)
Victoria Mullen-McKee, Family Court)
Commissioner, Division 64; Joseph A.)
Goeke, III, Associate Circuit Judge,)
Division 34; Susman, Schermer, Rimmel &)
Shifrin; Frank Susman, MBEN 19984;)
Norton Y. Beilenson, MBEN 17888;)
Deborah Benoit; Elaine M. Sturgeon,)
Appellees.)
)

[UNPUBLISHED]

Submitted: October 30, 2000

Before McMILLIAN, BOWMAN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

Charles H. Sturgeon appeals from the final judgment entered in the District Court[1] for the Eastern District of Missouri, dismissing under Fed. R. Civ. P. 12(b)(1) and (6) his civil rights action, in which he asserted the violation of his rights under 42 U.S.C. §§ 1983, 1985, and 1986 in connection with unsuccessful divorce-decree-modification proceedings he had initiated in state court. For reversal, he argues the district court erred in concluding that it lacked jurisdiction to hear his claims, that the judicial defendants were immune, and that he had not alleged a conspiracy. He also asserts that the state judicial officer who issued rulings in his divorce litigation was not authorized to do so. Some defendants have moved for summary affirmance. We deny their motion and, for the reasons discussed below, we affirm the judgment of the district court.

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[1] The Honorable Charles A. Shaw, United States District Judge for the Eastern District of Missouri.

Upon de novo review, see Phillips v. Ford Motor Co., 83 F.3d 235, 239 (8th Cir. 1996), we conclude dismissal of Sturgeon's complaint was warranted. First, the district court lacked jurisdiction to hear claims relating to Sturgeon's divorce proceedings, including his claim that a state judicial officer lacked authority to issue various rulings. See Atlantic Coast Line R.R. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 296 (1970) (federal district courts may not sit in review of state court decisions); Charchenko v. City of Stillwater, 47 F.3d 981, 983 (8th Cir. 1995) (Rooker-Feldman[2] doctrine precludes federal court from reviewing state court action if relief requested would effectively reverse state court decision or void its ruling); Kahn v. Kahn, 21 F.3d 859, 861 (8th Cir. 1994) (federal court lacked subject matter jurisdiction to hear tort claims inextricably intertwined with property settlement incident to divorce proceeding). Second, the judicial defendants were immune from civil liability for damages, see Liles v. Reagan, 804 F.2d 493, 495 (8th Cir. 1986), Sturgeon's ex-wife and her lawyers did not act under color of state law by using the state court system. See Hassett v. Lemay Bank & Trust Co., 851 F.2d 1127, 1129 (8th Cir. 1988). Finally Sturgeon did not sufficiently allege a conspiracy, much less invidiously discriminatory animus on the part of defendants. See Brandon v. Lotter, 157 F.3d 537, 539 (8th Cir. 1998) (§ 1986); Larson v. Miller, 76 F.3d 1446, 1454 (8th Cir. 1996) (§ 1985); Rogers v. Bruntrager, 841 F.2d 853, 856 (8th Cir. 1988) (§ 1983).

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[2] District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923).

Accordingly, we affirm. Because we, like the district court, may not review state court decisions, we deny Sturgeon's pending petition for injunctive relief from garnishment orders entered by the state court.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

[Filed September 9, 1999]

No. 4:98-CV-1506 CAS

CHARLES H. STURGEON)
Plaintiff,)
)
v.)
)
DUANE BENTON, et al.)
Defendants.)
)

MEMORANDUM AND ORDER

This matter is before the Court on three separate motions to dismiss plaintiff's first amended complaint for failure to state a claim. Charles H. Sturgeon filed this action pro se against 27 judges and former judges of the Missouri Supreme Court, the Eastern District of the Missouri Court of Appeals, and the Circuit Court of St. Louis County, Missouri; his ex-wife; and the law firm and 3 individual partners of the firm which represented his ex-wife in connection with his motion filed in state court to modify his decree of dissolution in 1996 when he lost his job. Sturgeon claims that defendants violated his due process rights in various rulings on his motion to modify, his ex-wife's cross motion to modify and motion to find plaintiff in contempt of court, and in his attempts to appeal these rulings. He seeks declaratory, injunctive and monetary relief under 42 U.S.C. §§ 1983, 1985 and 1986.

A motion to dismiss should be granted "only if it is clear that no relief can be granted under any set of facts that could be proven consistent with the allegations." St. Croix Waterway Ass'n v. Meyer, 178 F.3d 515, 519 (8th Cir. 1999). The Court has reviewed Sturgeon's complaint and first amended complaint and agrees with defendants that he fails to state a claim for which relief can be granted. See Patten v. Glaser, 771 F.2d 1178 (8th Cir. 1985) (state court judge immune from liability under § 1983 for acts during divorce proceeding which allegedly violated husband's constitutional rights); Duly v. City of Springfield, 42 F.3d 460, 462 (8th Cir. 1984) (judicial immunity when judge is acting in judicial capacity); Charchenko v. City of Stillwater, 47 F.3d 981, 983-84 (8th Cir. 1995) (district courts lack subject matter jurisdiction over constitutional challenges if claims are intertwined with state court rulings). There are no allegations that the private defendants conspired with the judicial defendants to "fix" the state court proceedings. Cf. Dubose v. Kelly, No. 98-1943MN (8th Cir. Aug. 17, 1999), 1999 WL 619063.

Accordingly,

IT IS HEREBY ORDERED that defendants' motions to dismiss the first amended complaint are GRANTED. [Doc. 34, 35, 36]

An appropriate Order of Dismissal will accompany this Memorandum and Order.

/s/________________________
CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 9th day of September, 1999.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

[Filed September 9, 1999]

No. 4:98-CV-1506 CAS

CHARLES H. STURGEON)
Plaintiff,)
)
v.)
)
DUANE BENTON, et al.)
Defendants.)
)

ORDER OF DISMISSAL

Pursuant to the Memorandum and Order filed herein this day.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that this action is dismissed with prejudice.

/s/
CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 9th day of September, 1999.

APPENDIX C

IN THE SUPREME COURT OF MISSOURI

January Session, 1999

[Filed February 23, 1999]

No. 81269
E.D. No. 72855

Elaine Sturgeon,)
Respondent,)
)
vs. (TRANSFER))
)
Charles Sturgeon,)
Appellant.)
)

Now at this day, on consideration of appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals, Eastern District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Thomas F. Simon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the January Session, 1999, and on the 23rd day of February, 1999, in the above-entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson this 23rd day of February, 1999.

/s/ ______________________ Clerk

______________________ D.C.

APPENDIX D

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

[Dated November 18, 1998]

TO: ATTORNEYS OF RECORD

FROM: LYNN COOPER HEARNES, CLERK

RE: MOTIONS FOR REHEARING AND/OR
TRANSFER TO SUPREME COURT DENIED

1. 55936 STATE OF MISSOURI, RESPONDENT
vs. EDWARDS, LELAND, APPELLANT

2. 72747 SCHNEIDER, LYNN & SUE,
RESPONDENT
vs. GIORDANO, GENE & BALENLAUSH,
DENNIS, APPELLANT

3. 72855 STURGEON, ELAINE, RESPONDENT
vs. STURGEON, CHARLES, APPELLANT

4. 72929 SCOTT, KERWIN D., APPELLANT
vs. STATE OF MISSOURI, RESPONDENT

5.	73783	WEIL, AURELIO A & RUSSELL, APPELLANT
	vs.	RIGALI, JUSTIN, ARCHBISHOP OF ROMAN CATHOLIC, RESPONDENT
6.	74200	WALKER, CATHERINE DELORES, RESPONDENT
	vs.	WALKER, GARY JAMS, APPELLANT
7.	74533	STATE OF MISSOURI, APPELLANT
	vs.	DAVIS, MARTIEZ, RESPONDENT

APPENDIX E

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
DIVISION ONE

[Filed September 22, 1998]

No. 72855

ELAINE STURGEON,)
Petitioner/Respondent,)
)
vs.)
)
CHARLES STURGEON,)
Respondent/Appellant.)

Appeal from the Circuit Court of St. Louis County
Hon. Victoria McKee

Husband appeals from four orders, each denominated "Judgment," entered on June 6, 1997 by Family Court Commissioner Victoria McKee. The orders (1) denied husband's motion for attorney fees on appeal, (2) denied husband's motion for a new trial "as to issues on motion to modify," (3) amended the findings of the decree of dissolution and (4) denied husband's motion to amend a contempt order entered November 14, 1996. Husband filed a pro se notice of appeal on July 15, 1997. The Minutes of Proceedings reflect that the orders have not been signed by any person other than Commissioner McKee. We dismiss the appeal.

As a point of reference, we recognize that a party may appeal from any final judgment. See Rule 81.01; section 512.020, RSMo 1994. Rule 74.01(a) provides that:

> "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment is rendered when entered. A judgment is entered when a writing signed by the judge and denominated "judgment" or "decree" is filed. A judgment may be a separate document or included on the docket sheet of the case.

Under this rule, a judgment must be (1) in writing, (2) signed by the judge, (3) denominated "judgment" and (4) filed. Chambers v. Easter Fence Co., Inc., 943 S.W.2d 863, 865 (Mo. App. 1997).

As the Missouri Supreme Court recently stated:

> [a]lthough the documents filed in [this] case[] are denominated "judgment," they are not signed by a judge. Because the documents are not signed by a person selected for office in accordance with and authorized to exercise judicial power by article V of the state constitution, no final and appealable judgment has been entered . . . .

Slay v. Slay, Nos. 80405 to 80407, 1998 WL 130815 at **1 (Mo. banc March 24, 1998). Commissioner McKee was not selected for office in accordance with article V of the Missouri Constitution, therefore this court is without jurisdiction to hear husband's appeal. Id.; Sturgeon v. Sturgeon, No. 72478 slip op. at 2 (Mo. App. 1998).

The appeal is dismissed for lack of appellate jurisdiction.

/s/________________________
CLIFFORD H. AHRENS, Judge

James A. Pudlowski, P.J., concurs.
William H. Crandall Jr. J., concurs.

APPENDIX F

IN THE SUPREME COURT OF MISSOURI

May Session, 1998

[Filed August 25, 1998]

No. 81025
E.D. No. 72478

Elaine Sturgeon,)
Respondent,)
)
vs. (TRANSFER))
)
Charles Sturgeon,)
Appellant.)
)

Now at this day, on consideration of Appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals, Eastern District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Thomas F. Simon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the May Session, 1998, and on the 25th day of August, 1998, in the above-entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson this 25th day of August, 1998.

/s/______________________ Clerk

______________________ D.C.

APPENDIX G

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

[Dated July 20, 1998]

TO: ATTORNEYS OF RECORD

FROM: LYNN COOPER HEARNES, CLERK

RE: MOTIONS FOR REHEARING AND/OR
TRANSFER TO SUPREME COURT DENIED

1. 69653 STATE OF MISSOURI, RESPONDENT
vs. CLEVELAND, ANTHONY, APPELLANT

2. 71508 STATE OF MISSOURI, RESPONDENT
vs. SAMUELSON, MICHAEL, APPELLANT

3. 71911 STATE OF MISSOURI, RESPONDENT
vs. CARTER, MICHAEL, APPELLANT

4. 72478 STURGEON, ELAINE, RESPONDENT
vs. STURGEON, CHARLES, APPELLANT

5. 72522 HUFKER, HAROLD W. & SUSAN M., RESPONDENT
vs. TRAVIS SHANE CORPORATION OF MISSOURI, APPELLANT

6. 73128 STATE OF MISSOURI, RESPONDENT
vs. RANSOM, LYDELL, APPELLANT

APPENDIX H

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
DIVISION FIVE

[OPINION FILED: May 26, 1998]

No. 72478

ELAINE STURGEON,)
Respondent,)
)
vs.)
)
CHARLES STURGEON,)
Appellant.)
)

Appeal from the Circuit Court of St. Louis County

Before Lawrence G. Crahan, C.J., Richard B. Teitelman, J., and Charles B. Blackmar, Sr. J.

PER CURIAM.

Charles Sturgeon (Husband) appeals from a judgment entered on April 24, 1997 against him and in favor of Elaine Sturgeon (Wife) by Commissioner Victoria McKee. That judgment (1) granted Wife's motion for attorney's fees on appeal to be paid to her by Husband, and (2) denied Husband's motion for disbursement to him of the remainder of the funds which had been placed in the registry of the court from the execution sale of his house.

The judgment of April 24, 1997 was signed "Victoria McKee, Commissioner." It was neither counter-signed nor endorsed by a Circuit Judge or by an Associate Circuit Judge. Commissioner McKee herself, of course, is not a judge selected for office in accordance with and authorized to exercise judicial power by Article V of the Missouri Constitution.

It follows that the order of April 24, 1997 signed by Commissioner McKee and denominated "Judgment" is not a final, appealable judgment and this appeal must therefore be dismissed for lack of jurisdiction. Slay v. Slay, Gray v. Gray, Bell v. Bell, Case Nos. 80405, 80406 and 80407 (Mo. banc, decided March 24, 1998).

Accordingly, the appeal is dismissed.

APPENDIX I

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

MOTION RULINGS OF FEBRUARY 10, 1998

70222 State of Missouri, Resp. vs. Gilmore, James, App. App. mtn for recall of mandate DENIED. NOA was untimely sentence was imposed on February 6, 1996. NOA was due ten day later. Rule 30.01(d). NOA filed on March 13, 1996 was untimely.

71736 Sturgeon, Elaine, Resp. vs. Sturgeon, Charles, App App. mtn to vacte order of dismissal or mtn for rehearing DENIED.

71938 Grover, Richard, App. vs. Wal Mart, Resp. Mtn to substitute Catherine Grover defendant ad litem, for decedent Alan Grover is granted.

72054 State of Missouri, Resp. vs. Cella, Andrew, App. App's Haslag, Peek, Ransdell's mtn to file brief DENIED.

72277 Chapman, F.A., App. vs. Commerce Bank of St. Louis, Resp.
App. Filed a mtn for rehearing or transfer on February 5, 1998 from an opinion handed down on January 20, 1998. The mtn was filed more than fifteen days after the opinion was filed. Rules 83.2 and 84.17. The mtn for rehearing or transfer is stricken as untimely.

IMPORTANT NOTICE: PLEASE BE ADVISED THAT YOUR EXTENSION OF TIME MAY NOT HAVE BEEN GRANTED FOR THE TIME REQUESTED. PLEASE BE SURE TO VERIFY YOUR EXTENSION DUE DATE. IF A MOTION FOR EXTENSION OF TIME TO FILE THE TRANSCRIPT WAS REQUESTED, NOTIFY THE COURT REPORTER OF THE DUE DATE.

APPENDIX J

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

[Filed ________]

No. 71736

ELAINE STURGEON,	)
Plaintiff-Respondent,	)
	)
vs.	)
	)
CHARLES STURGEON,	)
Respondent-Appellant.	)
	)

Appeal from the Circuit Court of St. Louis County
Honorable Victoria McKee
Family Court Commissioner

ORDER

This case has previously been submitted to Division IV on January 9, 1998. On the Court's own motion, this cause is removed from submission and the appeal is dismissed for lack of an appealable judgment.

Charles Sturgeon (Husband) is attempting to appeal from two contempt judgments, dated September 30, 1996 and November 14, 1996. On January 9, 1992, the trial court entered a decree dissolving the marriage of Elaine Sturgeon (Wife) and Husband. On February 21, 1992, Husband and Wife consented to an Order amending the divorce decree. On April 26, 1996, Husband filed a Motion to Modify Child Support and Maintenance, which is not part of this appeal. On June 20, 1996, Wife filed a Cross-Motion for Contempt. After a hearing on September 30, 1996, the trial court sustained Wife's Cross-Motion for Contempt and entered a Judgment of Contempt against Husband. In relevant part, the court ordered Husband to pay child support and maintenance arrearages, totaling $4,732, and to pay for and provide health insurance for the parties' daughter. Husband was incarcerated for non-compliance with this judgment. Husband was released from incarceration after paying the arrearages.

On October 17, 1996, Wife filed another motion for contempt against Husband. On November 14, 1996, Husband and Wife consented to a Judgment of Contempt resolving the Second Cross-Motion for Contempt. The trial court specifically found this "order was entered into by the consent of the parties and without . . . trial by the court." (emphasis added).

It is from these two contempt judgments that Husband appeals.

A person found in civil contempt has two alternatives: purge himself of contempt by complying with the court's order or appeal. Niehoff v. Forney, 692 S.W.2d 635, 637 (Mo. App. E.D. 1985). If a person chooses the first alternative, "the case becomes moot and unappealable." Id. On the other hand, if a person chooses the latter alternative, "he must wait until the court's order is enforced by actual incarceration pursuant to a warrant of commitment." Id.

The record reflects that Husband purged himself of the September 30, 1996 contempt judgment by complying with its terms. Therefore, any issues pertaining to that judgment are moot and unappealable.

"A judgment, order, or decree entered by consent of the parties is not a judicial determination of rights but a recital of an agreement and cannot be appealed." St. Louis Airport Hilton v. Marriott Corp., 888 S.W.2d 752, 753 (Mo. App. E.D. 1994); Rosemann v. Roto-Die Co., 947 S.W.2d 507, 510 (Mo. App. E.D. 1997). The November 14, 1996 contempt judgment was consented to and signed by Wife and Husband. Thus, this contempt judgment also cannot be appealed.

The appeal is dismissed.[1]

---

[1] Because the judgments in question would not be appealable even if entered by a Circuit Judge rather than a Commissioner, we need not reach or decide whether they would also not be considered appealable judgments as defined in Rule 74.01, an issue presently pending before the Missouri Supreme Court. See Bell v. Bell, No.71313 (Mo. App. E.D. Nov. 25, 1997); Gray v. Gray, No. 71970 (Mo. App. E.D. Nov. 25, 1997); Slay v. Slay, No. 72106 (Mo. App. E.D. Nov 25, 1997); and Morrow v. Morrow, No. 71983 (Mo. App. E.D. Dec. 13, 1997).

/s/________________________
Lawrence G. Crahan, Chief Judge

cc: Norton Y. Beilenson
Charles Sturgeon

APPENDIX K

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

[Filed August 28, 1997]

No. 72962

CHARLES STURGEON,)
Relator,)
)
v.)
)
ELAINE STURGEON,)
Respondent,)
)

Writ of Mandamus

ORDER

Relator has filed a Writ of Mandamus together with exhibits and Motion for Immediate Ruling. Respondent has filed Response to Petition of Mandamus, Suggestions in Opposition and Motion for Attorney's Fees.

Respondent's Motion for Attorney's Fees is denied.

Being duly advised in the premises, the Court DENIES Relator's Petition for Writ of Mandamus.

SO ORDERED.

DATE: August 28, 1997

/s/________________________
JAMES A. PUDLOWSKI
Presiding Judge
Writ Division III
Missouri Court of Appeals
Eastern District

cc: Charles Sturgeon
Norton Y. Beilenson.
Hon. Victoria McKee

APPENDIX L

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS STATE OF MISSOURI

[Filed July 7, 1997]

[Granted July 11, 1997]

Cause No. 609457
Division FC 11

ELAINE STURGEON,)
Petitioner,)
)
v.)
)
CHARLES STURGEON,)
Respondent,)
)

MOTION TO WITHDRAW

COMES NOW Timothy E. Hogan, attorney for Respondent Charles Sturgeon, and prays that the Court grant him leave to withdraw from the above-styled cause, and that it continue the date for filing of Respondent's Brief until substitute counsel may be secured by Appellant; and in support thereof, states as follows:

1.) That counsel has been informed by Respondent, his client, that he has filed a complaint against counsel with the Office of Disciplinary Counsel alleging some violation(s) of the Code of Professional Responsibility relating to counsel's representation of Respondent; and,

2.) That counsel has been informed by Respondent that his representation constitutes "malpractice", and has threatened such suit; and that Respondent has thereby created a conflict of interest such that it would be improper for counsel to proceed under Rule 4-1.7(b).

WHEREFORE, Timothy E. Hogan prays that this Court grant him leave to withdraw as counsel for Respondent, and that it continue the briefing deadlines in this cause until such time as substitute counsel may be secured by Respondent.

Respectfully Submitted,

Motion to Withdraw - 7/7/97 *and Grant of Motion* - 7/11/97

/s/____________________
Timothy E. Hogan #37718
705 Olive Street, Suite 820
St. Louis, MO 63101-2209
(314) 241-2171 Office
(314) 241-8004 Fax
Attorney for Respondent

Certificate of Service

I hereby certify that, this 7th day of July, 1997, a true and accurate copy of the foregoing was forwarded via United States Postal Service, addressed to:

Mr. Norton Beilenson
7711 Carondelet Ave., Suite 1000
Clayton, MO 63105

/s/____________________

So ordered
Victoria McKee
7-11-97(*)

---

*Italics denote handwriting in original document.

APPENDIX M

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS, STATE OF MISSOURI

[Filed June 6, 1997]

Cause No. 609457

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

In Re the Marriage of:)
)
ELAINE STURGEON,)
Petitioner)
)
vs.)
)
CHARLES HARVEY STURGEON,)
Respondent)

AMENDED FINDINGS AND RECOMMENDATIONS OF THE COMMISSIONER AND JUDGMENT MODIFYING DECREE OF DISSOLUTION

Petitioner's and Respondent's Motion to Modify prior decree called for hearing on September 30, 1996. Petitioner appears in person and by attorney, Norton Beilenson. Respondent appears in person and by attorney Kip Wilborn. Evidence adduced on September 30, 1996.

1. Respondent has an employment history and is physically capable of employment. Respondent received severance pay packages and pension from Monsanto that includes monies received since January 31, 1996, of $126,740.00; $5,877.00; $809.00; and $20,275.00.

2. Respondent failed to disclose assets to the Court in his statement of property.

3. Respondent is capable of obtaining employment and his lack of job at time of trial is occasioned by his own fault.

4. Respondent has had no increase in income.

The Court finds no change in circumstances so substantial and continuing as to make the terms concerning child support unreasonable.

Both Respondent's Motion and Petitioner's Motion are heard and Overruled. The costs of court shall be paid by Respondent.

FINDINGS, RECOMMENDATION AND ORDER

/s/ *Victoria McKee*[*]
Victoria Mullen McKee
6/6/97

A written notice for a hearing before a judge of the Family Court may be filed within fifteen (15) days after receipt of the above by the parties.

cc: Attorneys of Record.

---

[*] Italics denote handwriting in original document.

APPENDIX N

IN THE FAMILY COURT OF ST. LOUIS COUNTY, MISSOURI

[Filed May 2, 1997]

Case No. 609457

ELAINE STURGEON)
Petitioner) 4/28/97
) Date
and)
)
CHARLES STURGEON) FC- 11 (64)
Respondent) Family Court Division
)

Pursuant to this Court's judgment of 4/24/97, the sum of $6,700 is hereby ordered to be paid out of the Registry of the Court to Norton Y Beilenson, attorney for Petitioner as and for attorneys fees on appeal.

SO ORDERED:

/s/ *Victoria McKee*(*)
~~Judge~~/Commissioner

5-2-97
Date

---

[*] Italics or strikethrough denotes handwriting in original document.

APPENDIX O

IN THE MISSOURI COURT OF APPEALS EASTERN DISTRICT

[Filed April 24, 1997]

No. 72360

CHARLES STURGEON,)
Relator,)
)
vs.)
)
ELAINE STURGEON,)
Respondent,)
)

Writ of Mandamus
St. Louis County,
No. 609457

ORDER

Relator has filed a Petition for a Writ of Mandamus along with exhibits. This Court has received a copy of an order dated April 24, 1997.

Being duly advised in the premises, relator's petition for writ of mandamus is denied.

SO ORDERED.

DATE: 4/24/97

/s/____________________
Robert G. Dowd, Jr.,
Acting Presiding Judge,
Writ Division VI
Missouri Court of Appeals
Eastern District

cc: Hon. Victoria McKee
Norton Beilenson
Charles Sturgeon

APPENDIX P

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

[Filed April 24, 1997]

Cause No. 609457

ELAINE STURGEON	)	
Plaintiff(s)/Petitioner	)	4/24/97
	)	Date
vs.	)	
	)	
CHARLES STURGEON	)	64
Defendant(s)/Respondent(s)	)	Division
	)	

JUDGEMENT(*)

Petitioner's Motion for attorney fees on account and Respondent's motion for disbursement of funds in Court Registry argued before the Court. Petitioner appears by attorney Norton Beilenson. Respondent appears in person.

The Court finds that Petitioner is in need of attorney fees on appeal and orders that Respondent pay to Petitioner $6700 to be held

---

[*] Italics denote handwriting in original document.

on account to assist her in paying legal fees in this matter. The money shall be paid from the funds held in the Registry of the Court.

The Court denies Respondent's request to disburse funds in the Registry of the Court in that he failed to notify the holders of the deeds of trust as to this matter.

SO ORDERED.

Findings and Recommendation

/s/ *Victoria McKee*
Judge *Comm.*

ENTERED: 4/24/97

APPENDIX Q

IN THE CIRCUIT COURT OF THE
COUNTY OF ST. LOUIS
STATE OF MISSOURI

[Filed November 14, 1996]

Cause No. 609457
Division FC 11

ELAINE STURGEON,)
Petitioner,)
)
vs.)
)
CHARLES HARVEY STURGEON,)
Respondent,)
)

JUDGEMENT OF CONTEMPT

Petitioner's Motion for Contempt called.

Appearances:

Petitioner appears by attorney and in person.

Respondent appears by attorney and in person.

Evidence adduced.

Motion heard and sustained.

The Court finds that:

1. On or about January 9, 1992 a decree was entered in the above-styled cause.

2. In said decree, Respondent was ordered to pay to Petitioner $583.00 per month for Julie Sturgeon, born July 14, 1977, as and for child support and $600.00 per month for maintenance for Petitioner.

3. In addition, Respondent was ordered to pay for and provide health insurance for the child Julie Ann Sturgeon, born July 14, 1977.

4. Respondent had an employment history and is physically and mentally capable of employment.

5. Respondent has refused to pay to Petitioner willfully and contumaciously, the child support and maintenance payments for the months of June, July, August, September and October, *and November*(*) 1996 for a total arrearage of ~~$5,915.00~~ *$7,093.00*.

6. Petitioner has made reasonable efforts to collect by the conventional remedies available.

---

[*] Italics or strikethrough denotes handwriting in original document.

7. Respondent has violated the Court order by willfully and contumaciously failing to provide health insurance for Julie Ann Sturgeon, the child.

8. Respondent has not shown that he was not able to comply with the Court's decree.

9. Respondent is in contempt of this Court for his willful refusal to comply with the Order of this Court.

10. Respondent has sufficient assets with which he can pay the child support and maintenance and can afford to provide health insurance for Julie Ann Sturgeon.

11. Respondent received severance pay package and pension from Monsanto that includes monies since January 31, 1996 of $126,740.00, $5,877.00, $809.00 and $20,275.00.

12. Therefore, to compel compliance with this Court's order of January 13, 1992, Respondent is hereby sentenced to imprisonment at the Department of Justice of St. Louis County, Missouri until he pays ~~$5,915.00~~ $7,098.00 to the Petitioner or the Registry of the Court the sum of ~~$5,915.00~~ $7,098.00 and provides a health insurance policy for Julie Ann Sturgeon or until he otherwise be discharged according to law.

~~13. Respondent ordered to pay Susman, Schermer, Rimmel & Shifrin, L.L.C. the sum of $_____ as and for the reasonable and necessary attorney fees in this matter.~~

14. Costs assessed against Respondent.

Judgment of Contempt - 11/14/96

FINDINGS AND RECOMMENDATION OF THE COMMISSIONER AND JUDGMENT

Victoria McKee
COMMISSIONER

11-14-96
DATE

DB\FORMS\sturgeon.cnt:law

15. Execution on this judgment stayed provided that Charles Sturgeon pay the sum of $7,098.00 to Petitioner by Nov. 15, 1996 at 5:00 p.m. and proof of insurance processing by 11/18/96 and of insurance coverage by 12/14/96. If Petitioner has not received the $7098.00 by November 15, 1996 at 5:00p.m., Petitioner shall file notice with this Court and request entry of a Warrant and Commitment Order.

Charles Sturgeon
Elaine Sturgeon

Deborah Benoit
Attorney for Petitioner

R. Kip Welborn
Attorney for Respondent

APPENDIX R

IN THE FAMILY COURT OF ST. LOUIS COUNTY, MISSOURI

FINDINGS AND RECOMMENDATIONS OF THE COMMISSIONER AND JUDGMENT MODIFYING DECREE OF DISSOLUTION

[Fold-out]

IN THE FAMILY COURT OF ST. LOUIS COUNTY, MISSOURI

IN RE THE MARRIAGE OF:

Elaine Sturgeon
Petitioner

S.S.# ______

and

Charles H. Sturgeon
Respondent

S.S.# ______

FILED
NOV 06 1996
GENE OVERALL
CIRCUIT CLERK, ST. LOUIS COU

11-6-96
Date

609457
Case No.

FC- 11
Family Court Division

FINDINGS AND RECOMMENDATIONS OF COMMISSIONER
And Judgment Modifying Decree of Dissolution

(Petitioner's s~~)~~(Respondent's) Motions to Modify Prior Decree called. Evidence adduced 9-30-96

Appearances:

☒ Petitioner appears (by attorney) (in person)*
☐ Petitioner fails to appear
☒ Respondent appears (by attorney) (in person)*
☐ Respondent fails to appear

☒ Both Motions heard and overruled.
☐ Motion heard and sustained (by consent)*

(A) Modification of Child Custody and/or Visitation

☐ The court hereby finds that a modification is in the best interest of the child(ren)* and therefore modifies the decree of dissolution heretofore granted on ______ (as previously modified on ______ *) in regard to (child visitation*) (child custody*) as follows:

☐ Order of custody is modified by granting to (Petitioner) (Respondent)* the care, custody and control of the following minor child(ren)* ______

☐ Order of temporary custody is modified by awarding to (Petitioner) (Respondent)* temporary custody of said minor child(ren)* on ______

(B) Modification of Child Support and/or Maintenance

☐ The court finds a change in circumstances so substantial and continuing as to make the terms concerning (child support*) (maintenance*) unreasonable. Therefore the decree of dissolution heretofore granted on ______ (as previously modified on ______ *) is modified as follows:

☐ (Petitioner) (Respondent)* ordered to pay to (Petitioner) (Respondent)* the sum of:

$ ______ per ______ for ______ $ ______ per ______ for ______
$ ______ per ______ for ______ $ ______ per ______ for ______
$ ______ per ______ for ______ $ ______ per ______ for ______

☐ Child support amounts were determined in accordance with authorized support guidelines.
☐ Application of authorized support guidelines would be unjust or inappropriate.
☐ Order of maintenance is modified by awarding to (Petitioner) (Respondent)* the sum of $ ______ per ______ to be paid by the (Petitioner) (Respondent)* commencing the ______ day of ______, 19 ______ (and continuing for a period of ______).

BEST AVAILABLE COPY

☐ Maintenance shall be (subject to Modification) (not subject to Modification).*

Income withholding shall be prepared by the obligee and issued by the Circuit Clerk upon the effective date of this order(.) (unless:)

A. ☐ The court finds that there is good cause not to require an immediate income withholding for the reason(s) that

____ or

B. ☐ A written agreement is reached between the parties that provides for an alternative arrangement.

(C) Other Orders

☐ (Support) (maintenance)* ordered paid to Circuit Clerk as Trustee.

☐ (Petitioner) (Respondent)* is ordered to pay to (Petitioner) (Respondent)* the sum of $__________ as and for attorney fees.

☐ Stipulation filed.

☒ Costs assessed against (~~Petitioner)~~ (Respondent)*

☐ (Petitioner) (Respondent) shall provide coverage under a health benefit plan for the minor child(ren) through (employment) (a union) or (purchasing a plan) as provided (herein) (by attached exhibit ___ which is incorporated into, and made a part of this judgment).

☐ Other Orders:

~~The above findings and recommendations shall become the order of the Court without further notice unless~~ a ~~written motion for rehearing is filed with the Clerk of the Family Court within 15 days after receipt of the~~ e ~~above by Petitioner and Respondent~~.

☐ WAIVER: We, the undersigned parties, aware of our right to file a Motion for Rehearing do hereby waive the right to file a Motion for Rehearing and do hereby consent to the immediate entry of an Order by the Judge adopting and confirming these findings and recommendations as the judgment of the court.

Signature of Petitioner	Signature of Respondent	
Attorney for Petitioner	Attorney for Respondent	Guardian Ad Litem
Address	Address	Address
(314)	(314)	(314)

Finding, Recommendations & Judgment

Victoria McKee

Commissioner

11-6-96

Approved and Adopted, Judge
As Judgment

*Strike words not applicable

CCFC11 10/94

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

In Re The Marriage Of:

Elaine Sturgeon,
Petitioner

FILED
SEP 30 1996
GENE OVERALL
CIRCUIT CLERK, ST. LOUIS COUNTY

S.S.#

9-30-96
Date

and

609457
Case No.

Charles Harvey Sturgeon
Respondent

FC- 11
Family Court Division

S.S.#

JUDGMENT OF CONTEMPT

(Petitioner's) (~~Respondent's~~) Motion for Contempt called.

Appearances:

✓ Petitioner appears (by attorney)/(in person)
___ Petitioner fails to appear
✓ Respondent appears (by attorney)/(in person)
___ Respondent fails to appear

Evidence adduced.
___ Motion heard and overruled. ✓ Motion heard and sustained ~~(by consent)~~

The Court finds that:

1. On or about 1-13-92 a judgment/decree was entered in the above-styled cause.

2. In said judgment/decree, ~~Petitioner~~/Respondent was ordered to pay to Petitioner~~/Respondent~~ $ 583 per ~~child per~~ month for Julia St. as and for child support and $600. per month for maintenance for petitioner dob 7-14-77

3. In addition, ~~Petitioner~~/Respondent was ordered to:

a. pay for and provide health insurance for the child Julia Ann Sturgeon, dob 7-14-77.

4. ~~Petitioner~~/Respondent has an employment history and is physically and mentally capable of employment.

5. ~~Petitioner~~/Respondent has refused to pay to Petitioner/~~Respondent~~ willfully and contumaciously, the

a. Child support/maintenance payments for the months of February, March, April and May 1996 for a total ~~sum~~ arrearage of $4732.00

7. Petitioner/~~Respondent~~ has made reasonable efforts to collect by the conventional remedies available.

8. Petitioner/Respondent violated the Court order by willfully and contumaciously failing to provide health insurance for Julie Ann Sturgeon, the child.

9. ~~Petitioner~~/Respondent has not shown that he/she was not able to comply with the Court's decree.

10. ~~Petitioner~~/Respondent is in contempt of this Court for his willful refusal to comply with the Order of this Court.

11. Other findings:

a. Respondent has sufficient assets with which he can pay the child support and maintenance and can afford to provide health insurance for Julie Ann Sturgeon.

b. Respondent received severance pay package and pension ~~[illegible]~~ from Monsanto that include monies received since Jan 31, 1996 of $126,740, $5877, ~~and~~ $809, and $20,275.

APPENDIX S

IN THE CIRCUIT COURT OF THE
COUNTY OF ST. LOUIS
STATE OF MISSOURI

JUDGMENT OF CONTEMPT

[Fold-out]

12. Therefore, to compel compliance with this Court's order of 1-13-92, Petitioner/Respondent is hereby:

a. Sentenced to imprisonment at the Department of Justice Services of St. Louis County, Missouri until he/~~she~~ pays $ 4732 to the Petitioner/~~Respondent~~ or the Registry of the Court the sum of $4732 and provides a health insurance policy for Julie Ann Sturgeon or until he otherwise be discharged according to law.

13. Respondent ordered to pay to Norton Beilenson the sum of $10,130 as and for the reasonable and necessary attorney fees in this matter.

14. Costs assessed against Respondent.

Findings and Recommendations of the Commission and Judgment

Victoria McKee 9/30/96
Commissioner
FC-11

- page 3 of 3

APPENDIX T

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS STATE OF MISSOURI

[Filed January 9, 1992]

No. 609457
Division No. D-5 (40)

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

In Re The Marriage Of:)
)
ELAINE STURGEON,)
Petitioner,)
)
and)
)
CHARLES STURGEON,)
)
Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE OF DISSOLUTION

* * * * *

[page 14]

35. Husband shall name said minor child as a covered dependent under the present health insurance plan that is presently provided by his employer. If this insurance should no longer be available to Husband through his employer, then husband shall obtain dependent health insurance equivalent to such coverage for said minor child, or be liable for the reasonable and necessary medical and dental expenses of said minor child. If said present health insurance, or equivalent, does not pay all the reasonable and necessary medical and dental expenses of said minor child, then Husband shall pay and be liable for all such expenses, not covered by said health insurance.

* * * * *

[page 16]

. . . SO ORDERED:

/s/________________________
Susan E. Block,
Judge

Entered this 9th day of January, 1992.

APPENDIX U

IN THE SUPREME COURT OF MISSOURI

[Filed June 16, 1998]

No. 80742

State ex rel. Claudia J. York and)
James S. Stubbs,)
Relators,)
)
v.)
)
Honorable Jay A. Daugherty,)
Administrative Judge, Family Court)
Division, Circuit Court of Jackson)
County,)
Respondent.)
)

PER CURIAM.

WRIT QUASHED. Benton, C.J., Price, Limbaugh, Robertson, Covington, and Holstein, JJ., and Montgomery, Sp.J., concur. White, J., not sitting.

OPINION

On June 10, 1996, Family Court Commissioner Sherrill L. Rosen ("Commissioner Rosen") entered a purported judgment dissolving the marriage of Claudia J. York and James S. Stubbs ("Relators"). Commissioner Rosen acted pursuant to section 487.030[1], which states that "findings and recommendations of [a] commissioner [regarding family court actions] shall become the judgment of the court when entered by the commissioner." Nearly two years after Commissioner Rosen's purported judgment dissolving Relators' marriage, this Court held that documents signed solely by a commissioner are not final appealable judgments because they "are not signed by a person selected for office in accordance with and authorized to exercise judicial power by article V of the state constitution." *Slay v. Slay*, 965 S.W.2d 845 (Mo. banc 1998) (Nos. 80405, 80406, and 80407, decided March 24, 1998). Implicit in this holding is that section 487.030 is unconstitutional, at least so far as it authorizes commissioners to enter judgments. Since this Court's decision in *Slay*, there has been widespread and justifiable concern among the circuit courts regarding the validity of hundreds of purported judgments that were entered by family court commissioners under section 487.030. In reaction to the *Slay* decision, the Honorable Jay A. Daugherty ("Respondent"), a circuit judge who serves as the administrative judge of the family court division of the Jackson County Circuit Court, began entering "final judgments" in family court actions that had originally been decided by commissioners under section 487.030. In particular, on April 9, 1998, Judge Daugherty entered a "judgment" in Relators' dissolution of marriage action, confirming and adopting the findings and recommendations made by Commissioner Rosen on June 10, 1996. The effect of Respondent's action arguably was that the judgment in

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[1] All references to section 487.030 refer to section 487.030, RSMo Supp. 1997, which became effective May 15, 1996.

Relators' dissolution of marriage action became effective on April 9, 1998, rather than on June 10, 1996.

This Court entered a substitute preliminary order in prohibition and/or mandamus on April 27, 1998, ordering Respondent to set aside the "judgment" of April 9, 1998, and prohibiting Respondent from taking any further action in this case until ordered by this Court. This Court now holds that the rights of the parties were concluded by the June 10, 1996, "judgment" of the commissioner.[2]

A writ of mandamus is the appropriate method for a party to enforce a right that is "clearly established and presently existing." *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 576 (Mo. banc 1994). By contrast, prohibition will lie only where necessary to prevent a usurpation of judicial power, to remedy an excess of jurisdiction, or to prevent an absolute irreparable harm to a party. *Id.* at 577.

The argument of the relators relies primarily on the rarely applied theory of prospective application of a constitutional ruling. However, there are other reasons more deeply rooted in precedent for holding that the rights between the parties to this case are fully resolved by the purported judgment of a commissioner. These reasons are the complementary doctrines of waiver and estoppel.

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[2] The Court expresses its appreciation to Professor Douglas E. Abrams, University of Missouri-Columbia School of Law, and Marvin E. "Bunky" Wright, President of The Missouri Bar, for the excellent briefs they submitted as amici curiae.

Constitutional violations are waived if not raised at the earliest possible opportunity. *Adams v. Children's Mercy Hospital,* 832 S.W.2d 898, 907 (Mo. banc 1992) (rejecting as untimely the following constitutional claims: equal protection, one subject, privileges and immunities, constitutional directives for amending statutes, prohibition against special laws and separation of powers). Even a person convicted by an unconstitutionally composed jury must bring that claim to the attention of the trial court. *Davis v. United States,* 411 U.S. 240 (1973). This Court has also held that failure to raise a constitutional challenge to a statute in a proceeding before an administrative agency or on review of the agency's decision waives that claim. *City of Chesterfield v. Director of Revenue,* 811 S.W.2d 375, 378 (Mo. banc 1991). The critical question in determining whether waiver occurs is whether the party affected had a reasonable opportunity to raise the unconstitutional act or statute by timely asserting the claim before a court of law. *Callier v. Director of Revenue,* 780 S.W.2d 639, 641 (Mo. banc 1989) (waived only if "good pleading and orderly procedure" allow the party to raise the constitutional question). One exception to the waiver doctrine usually noted is where there was a lack of subject matter jurisdiction in the forum where the waiver occurred. But even an absence of jurisdiction is not necessarily an obstacle to a judgment having a conclusive effect on the rights of the parties.

The parties to a void judgment are estopped from raising a claim of lack of jurisdiction to enter a judgment in some circumstances.

> "It has often been said that a void judgment is no judgment; that it may be attacked directly or collaterally. . . . It neither binds nor bars

> anyone. . . . [Y]et, notwithstanding, a party to such judgment may voluntarily perform it, by paying the amount adjudged against him and, when paid, no inquiry will be made as to the validity of the judgment; or he may perform the acts required by a void decree, or accept its benefits, and thereby estop himself from questioning the decree. In other words, a party to a void judgment or decree may be estopped from attacking it, either directly or indirectly."

Tremayne v. City of St. Louis, 6 S.W.2d 935, 936 (Mo. banc 1928) (quoting *Mohler v. Shank*, 61 N.W. 981, 984 (Iowa. 1895)); *see also RCA Mut. Ins. Co. v. Sanborn*, 918 S.W.2d 893, 897 n.6 (Mo. App. 1996), and *Matter of Estate of Tapp*, 569 S.W.2d 281, 285 (Mo. App. 1978) (one accepting and retaining benefits of a void judgment is estopped to deny the validity of any part thereof, or any burdensome consequences, even where invalidity arises from want of subject matter jurisdiction). In nearly all classes of cases acted on by a family court commissioner, the judgment carries with it both burdens and benefits for each party.

Here the legislature enacted a presumptively constitutional but flawed statute that was not challenged on constitutional grounds until this Court did so sua sponte in *Slay*. Yet the statute also provides a mechanism for testing the correctness of the commissioner's determination before a circuit judge, including the opportunity to claim that the statute was unconstitutional. *See* sec. 487.030.2. *Slay* did not declare the portion of the statute authorizing review by a circuit court judge to be unconstitutional. One who fails to timely take advantage of that mechanism has waived any objection to the commissioner's authority, findings and legal conclusions and a party who assumed the benefits or burdens of such "judgment" is estopped from attacking it, as if sec. 487.030 were constitutional in its entirety. This waiver of the constitutional claim and estoppel against challenging the purported judgment extends not only to the parties but also to third parties who acquired rights or obligations by or through a party to the purported judgment. Thus, as to any such party, the commissioner's findings and recommendations are as conclusive as if entered as the judgment of an article V judge.

The application of the doctrines of waiver and estoppel is grounded in part on the parties' reasonable reliance on the legitimacy of the commissioner's purported judgment. By granting limited *past* efficacy to the purported judgments of commissioners, we are not compelled to sanction *future* unconstitutional practices by commissioners. Presumably, circuit judges stopped permitting commissioners to enter unconstitutional "judgments" after this Court's mandate was issued in *Slay*. After this Court concludes that a statute is unconstitutional, parties can no longer reasonably rely on the statute as a basis for continued entry of void judgments.

A separate issue exists with regard to the efficacy of judicial process issued in the future, such as execution or garnishment, to enforce the purported judgments. Because the commissioner's findings and recommendations are conclusive as to the rights of the parties, neither party may complain of the validity of any enforcement process. However, that does not mean that circuit court judges are prohibited from entering judgment in cases where a commissioner has imposed executory or future obligations. It is quite common for judgments in domestic relations cases to assign both retroactive and prospective rights and duties. It is also common to enter a judgment renewing a prior judgment in response to a motion to revive a judgment, Rule 74.09, or to correct technical deficiencies in a judgment by entry of orders nunc pro tunc, Rule 74.06(a). Nothing prohibits a circuit judge from entering a judgment consistent with the commissioner's decision in those circumstances. While such retroactive, renewed or corrected judgment may be appealable, claims regarding the commissioner's decision that could have been, but were not, raised in a timely fashion before a circuit judge would be deemed waived.

The mere absence of the necessity of a judicial act is not a basis for granting the extraordinary relief of mandamus or prohibition. One may question whether it is necessary for the circuit judge in this case to enter a judgment in conformity with that of the commissioner since neither party is seeking such relief. But it is also true that no prohibition on doing so is found. Since no new rights, obligations or relationships arise, neither party is prejudiced. Finding no legal obstacle to the circuit court's action here, the preliminary writ is quashed.

APPENDIX V

SUPREME COURT OF MISSOURI

[Filed March 28, 1998]

en banc

In Re The Marriage of:)
TOBY RUTH SLAY,)
Appellant,)
vs.) **No. 80405**
)
ALAN LEE SLAY,)
Respondent.)
)
In Re The Marriage of:)
JANET ELAINE GRAY, n/k/a)
JANET ELAINE GRAHAM,)
Appellant,)
vs.) **No. 80406**
)
WALTER GRAY, JR.,)
Respondent,)
)
PHYLLIS ANN BELL,)
Respondent,)
vs.) **No. 80407**
)
DAVID LESLIE BELL,)
Appellant.)
)

Slay v. Slay; Gray v. Gray; Bell v. Bell - Nos. 80405-80407

APPEALS FROM THE CIRCUIT COURT OF
ST. LOUIS COUNTY
The Honorable M. Zane Yates, Commissioner

PER CURIAM

In Slay, No. 80405, and Gray, No. 80406, a document entitled "JUDGMENT/ORDER" was filed. In Bell, No. 80407, a document entitled "JUDGMENT/DECREE OF DISSOLUTION" was filed. Each document is signed by "M. Zane Yates, Commissioner." In each case, a party appeals the "judgment" entered. Appeals dismissed.

Article V, section 1 of the state constitution vests the judicial power of this state in this Court, the court of appeals, and the circuit courts. These courts are composed of judges. ***Mo. Const. art. V, sections 2, 13, 15, and 16.*** Although the documents filed in these cases are denominated "judgment," they are not signed by a judge. Because the documents are not signed by a person selected for office in accordance with and authorized to exercise judicial power by article V of the state constitution, no final appealable judgment has been entered, and this Court is without jurisdiction.

The appeals are dismissed.

Limbaugh, Robertson, Covington and White, JJ., concur; Holstein, J., concurs in result in separate opinion filed; Benton, C.J., and Price, J., concur in opinion of Holstein, J.

Slay v. Slay; Gray v. Gray; Bell v. Bell - Nos. 80405-80407

SUPREME COURT OF MISSOURI

[Filed March 28, 1998]

en banc

In Re The Marriage of:	)	
TOBY RUTH SLAY,	)	
Appellant,	)	
vs.	)	**No. 80405**
	)	
ALAN LEE SLAY,	)	
Respondent.	)	
	)	
In Re The Marriage of:	)	
JANET ELAINE GRAY, n/k/a	)	
JANET ELAINE GRAHAM,	)	
Appellant,	)	
vs.	)	**No. 80406**
	)	
WALTER GRAY, JR.,	)	
Respondent,	)	
	)	
PHYLLIS ANN BELL,	)	
Respondent,	)	
vs.	)	**No. 80407**
	)	
DAVID LESLIE BELL,	)	
Appellant.	)	
	)	

OPINION CONCURRING IN RESULT

The per curiam succinctly addresses the basic question: does this Court or any appellate court have jurisdiction of an appeal from a purported judgment signed by a commissioner pursuant to sec. 487.030, RSMo Supp. 1997? The obvious answer correctly supplied in the per curiam is no, because a judgment must be entered by a judge as defined in Missouri Constitution, article V. The unsettling question not addressed is whether findings and recommendations signed only by commissioners pursuant to sec. 487.030 are void and of no effect on jurisdictional grounds because no person authorized to act as a judge under Missouri Constitution, article V, signed or assented to the entry.

Section 487.030, RSMo Supp. 1997 provides, in relevant part:

> 1. . . . In cases which are not IV D cases, findings and recommendations of the commissioner shall become the judgment of the court when entered by the commissioner. . . . Notice of the findings of the commissioner, together with a statement relative to the right to file a motion for rehearing, shall be given to the parties whose case has been heard by the commissioner . . . .
>
> 2. The parties to a cause of action heard by a commissioner are entitled to file with the court a motion for hearing by a judge of the family court either within fifteen days after receiving notice of the findings of the commissioner at

> the hearing, or within fifteen days after other service directed by the court.

Appellants assert that this statute makes a commissioner a de facto judge with jurisdiction to act as a judge. Generally speaking, jurisdiction over the subject matter and the litigants belongs to the court, not to the person acting as judge. Thus, it has been held that one not having authority to act as a judge of a particular court but who acted under color of authority of an improper appointment without objections by the parties is a de facto judge. *Brinkerhoff-Faris Trust & Savings Co. v. Gaskill*, 356 Mo. 61, 201 S.W.2d 274, 277 (1947). The decrees and judgments of a de facto judge, if not objected to in a proper manner, are valid and not subject to collateral attack. Id.

Applying those principles to this case, Commissioner Yates was not a de facto judge. The commissioner was sitting in the place of a judge and performing some responsibilities of a judge, including entry of "recommendations and findings." He was acting under color of authority granted pursuant to a lawful appointment as a commissioner and a presumptively constitutional statute. *Sec. 487.030.* However, the statutory "color of authority" of a commissioner does not extend to entry of a final judgment that is subject to appellate review. Rather, the statutory authority of a commissioner only extends to entry of "findings and recommendations" that are subject to review by a judge of the family court. *Sec. 487.030.2.* In addition, the commissioner was not acting under a mistaken appointment as a judge.

Within our constitutional framework, a "judgment of the court" necessarily involves the assent of a judge. Thus, the sentence in sec. 487.030.1 purporting to transmogrify the findings and recommendations of a commissioner into a "judgment of the court" is a nullity. However, the voidness of that sentence does not end the inquiry.

When part of a statute is unconstitutional, the remaining provisions are treated as valid unless the valid provisions are inseparably connected with, and so dependent on, the void provision that it cannot be presumed the legislature intended the valid provisions without the void one, or the valid provisions are incomplete and incapable of being executed. *Sec. 1.140.* The other provisions of sec. 487.030 are not inseparably connected to the offending sentence and the statute is complete and capable of being executed without the void provision.

Absent the statutory provision for review of a commissioner's decision by a judge of a trial court, a commissioner's "judgment" would almost certainly be unconstitutional and void.[1] However, section 487.030.2 gives a party a statutory right to seek timely review of the commissioner's decision by requesting a hearing by an article V judge, and failure to seek such review is a waiver of any further judicial review of the issues decided.

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[1] A plausible argument can be made that because no order has been signed by a judge assenting to the findings and recommendations of the commissioner, no judicial order of enforcement, such as contempt, execution or garnishment, may constitutionally issue till the findings are reduced to a judgment. That issue is not before the Court here and necessarily awaits another day.

Numerous circumstances may be cited in which a party may be precluded from complaining about a nonjudicial decision by failing to assert the claim within the time and manner provided by statute. The doctrines of estoppel and waiver are no less applicable to findings of a family court commissioner than to the findings of an administrative agency of the state. Assuming the statutory notice is given, any party who fails to timely object to the commissioner's entry of his or her findings and recommendations in the manner provided by statute is bound as conclusively as if the findings and recommendations were those of a judge. I believe a commissioner's findings and recommendations are not void and are not subject to collateral attack.

The question of whether findings and recommendations entered by commissioners are void and inconclusive cries out for an answer. Hundreds, if not thousands of Missourians have for some time conveyed property, remarried, and otherwise relied on the relationships and obligations created or terminated by the findings of family court commissioners. Usually, judicial restraint demands that we not address issues that are unnecessary to decide the case. However, where the absence of an explanation in a case will destabilize the law, create hardship, and will almost certainly require the expense, inconvenience and time of many hundreds of litigants, not to mention the certainty of future appeals, the principle of restraint must give way to those of judicial economy and sound policy. For these reasons, I concur.

/s/______________________
JOHN C. HOLSTEIN, Judge

APPENDIX W

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
DIVISION THREE

[Filed November 25, 1997]

No. 71313

PHYLLIS ANN BELL,)
Respondent,)
)
vs.)
)
DAVID LESLIE BELL,)
Appellant.)
)

Appeal from the Circuit Court of St. Louis County
Com. M. Zane Yates

In this court tried case, a commissioner of the family court awarded custody of Sultan Bell to his mother, Phyllis Ann Bell. Father, David Leslie Bell, appeals the commissioner's "judgment". Since a judge did not sign the writing denominated "judgment", a jurisdictional question exists as to whether there is final judgment under Rule 74.01(a). Transferred to Supreme Court.

Mother filed a petition for dissolution of her marriage with father on May 25, 1995. Father filed an answer and cross-petition. After a one day trial, the commissioner entered his "judgment" on May 16, 1996, awarding primary custody of Sultan Bell to his mother. Mother filed a motion for an amended judgment requesting that the commissioner alter the visitation arrangements. The commissioner court granted mother's motion and entered an amended judgment on August 26, 1996.[1] This appeal follows.

Neither party has questioned this court's jurisdiction over father's appeal. However, a reviewing court has a duty to determine its jurisdiction sua sponte. Stein v. Trampe, 897 S.W.2d 209, 210 (Mo. App. 1995). The right to appeal is purely statutory, and an appeal may be only taken from a final judgment of a trial court. Id.; Section 512.020 RSMo. (1994).

Rule 74.01(a) defines a judgment as a writing signed by the judge and denominated as a "judgment". Our Supreme Court has recently held that the provisions of Rule 74.01(a) must be strictly complied with in order for a writing to be a judgment.[2] City of St. Louis v. Hughes, No. 79514 (Mo. banc

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[1] Although it is beyond the scope of this opinion, there is an issue as to whether a family court commissioner has the power to rule on post-trial motions. The Rules of Civil Procedure relating to post-trial motions do not apply to cases before a family court commissioner. *See* Rule 41.01. Also, there is no statute that gives the commissioner the power to hear post-trial motions. In a similar situation, it has been held that the quasi-judicial officer does not have the power to hear or rule on post-trial motions. Lucitt v. Toohey's Estate, 89 S.W.2d 662, 665 (Mo. 1935).

[2] Before the Supreme Court's promulgation of Rule 74.01(a), Missouri Courts were quite liberal in interpreting what constituted a judgment. *See* State ex. rel. Newton County v. Robinson, 276 S.W.2d 235, 236 (Mo. App.

1997). Although Rule 74.01(a) requires a judge to sign a writing for it to become a "judgment", the legislature has declared that the findings and recommendations of a family court commissioner shall become the judgment of the court when entered by the commissioner. Section 487.030.1 RSMo. Cumm. Supp. (1996). The statute appears to conflict with the Supreme Court rule in that the statute does not require a judge to sign the writing denominated as "judgment" while the rule does.

Supreme Court Rules govern over conflicting statutes in procedural matters unless the General Assembly amends the rule by enacting a bill specifically for that purpose. Ostermueller v. Potter, 868 S.W.2d 110, 111 (Mo. banc 1993); Mo. Const. Art. V, Section 5. Rule 74.01(a) is procedural since it relates to the machinery used for carrying on the suit. *See* Wilkes v. Missouri Highway and Transportation Commission, 762 S.W.2d 27, 28 (Mo. banc 1988). Also, the General Assembly has not enacted a bill specifically for the purpose of amending Rule 74.01(a). Thus, Rule 74.01(a) requiring a judge to sign the writing denominated as "judgment" appears to control over section 487.030.1 which automatically converts the commissioner's findings into the court's judgment.

Here, only the family court commissioner signed the writing denominated as "judgment". The judgment signed by the commissioner is only a judgment as defined by Rule 74.01(a) if the commissioner is a judge. It is true that the legislature has vested commissioners with the power to enter findings and recommendations that affect the legal rights,

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1955) (holding that a board of arbitrators' finding was a judgment although the board was not a court in a constitutional sense.)

duties or privileges of the litigants. Therefore, commissioners do act in a quasi-judicial capacity. *See* Ryan v. McNeal, 569 S.W.2d 361, 363 (Mo. App. 1978). Courts have held that commissioners have the power to enforce their rulings by issuing contempt orders, State ex. rel. Roedel v. Yates, 926 S.W.2d 521, 522 (Mo. App. 1996), and are subject to the change of judge provisions of Rule 51.05, State ex. rel. Kramer v. Walker, 926 S.W.2d 72, 75-76 (Mo. App. 1996).

Although commissioners do have some judicial authority by statute, they are not judges. Section 487.030.1 states that in IV-D cases[3], the findings of the commissioner shall become the judgment of the court when adopted and confirmed by an order of the judge. Also, Section 487.030.2 recites that parties to a cause of action heard by a commissioner are entitled to file with the court a motion for a hearing by a judge of the family court. Furthermore, under the prior version of section 487.030.1, which required a judge to adopt and confirm the commissioner's findings and recommendations, our courts held that a commissioner was not a judge. *See e.g.* In re Interest of R.M.M., 902 S.W.2d 355, 358 (Mo. App. 1995). Therefore, under both the statute and prior case law, a commissioner is not equivalent to a judge.

Because a judge did not sign the writing denominated as "judgment", there is no final judgment as defined by Rule 74.01(a). Under the existing rule, we would conclude that we do not have jurisdiction to rule on the merits of father's appeal, and would therefore be required to dismiss the appeal. However, because of the general interest or importance of this question, we transfer the case to the Supreme Court pursuant to Rule 83.02.

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[3] A "IV-D" case is one in which support rights have been assigned to the State of Missouri. Section 452.345.1 RSMo. (1994).

/s/________________________
CLIFFORD H. AHRENS, Presiding Judge

William H. Crandall Jr., J., concurs.
Kent E. Karohl, J., concurs.

APPENDIX X

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
DIVISION TWO

[Filed November 25, 1997]

No. 71970

In re the Marriage of)
Janet Elaine Gray, n/k/a)
Janet Elaine Graham and)
Walter Gray, Jr.)
)
JANET ELAINE GRAY, n/k/a)
JANET ELAINE GRAHAM,)
)
Petitioner/Appellant,)
)
v.)
)
WALTER GRAY, JR.,)
)
Respondent/Respondent.)
)

Appeal from the Circuit Court of St. Louis County
Honorable M. Zane Yates
Family Court Commissioner

Father filed a motion to declare the parties' daughter emancipated and terminate child support after daughter took a one-semester leave of absence from college to join a touring dance group. Mother appeals from the family court commissioner's entry of summary judgment in father's favor. She asserts that because daughter's leave of absence related to her educational and career goals and she continued her education after the leave of absence, the trial court should have liberally construed Section 452.340.5 RSMo (1994) to allow daughter to continue to receive child support.

On the merits of this case we would affirm. However, the "judgment" in this case was signed by a commissioner pursuant to Section 487.030.1 RSMo (1996 Supp.) and not by a judge as required by Rule 74.01(a). This raises both a jurisdictional question and a question of the validity of Section 487.030.1 (1996 Supp.), which gives a commissioner the power to enter a judgment. Because the question regarding the validity of this statute is exclusively within the jurisdiction of the Missouri Supreme Court and the general interest and importance of this jurisdictional question, we transfer to the Missouri Supreme Court. Rule 83.02.

MERITS

The marriage of Janet Elaine Graham (f/k/a Janet E. Gray) (mother) and Walter Gray, Jr., (father) was dissolved in February 1981. Mother was awarded the care, custody, and control of the one child born of the marriage, Tiffany Anne Gray (daughter). Father was ordered to pay $75.00 per week for child support.

In June 1994 daughter graduated from high school. She began attending Webster University in the fall of that same year and selected dance as her major. During the summer of 1995, daughter decided to take a one-semester leave of absence to perform with Sesame Street Live, a national dance tour. Daughter notified the university of her decision to take a leave of absence and that she intended to return for the spring 1996 semester. Daughter was not enrolled in any school program while on tour.

As a performer with Sesame Street Live, daughter earned approximately $530.00 a week from which she had to provide for her own living expenses. Daughter toured with the dance company during the fall of 1995 and returned to the university in the following spring as planned. At the time of trial she continued to attend the university.

On March 12, 1996 father filed a motion to declare daughter emancipated and terminate support. On August 22, 1996 father filed a motion for summary judgment which the family court commissioner granted.

In her only point on appeal, mother asserts that the trial court erred in granting summary judgment in favor of father because it failed to liberally construe Section 452.340.5 RSMo (1994) to find that daughter's leave of absence was related to her educational and career goals. She argues that daughter was entitled to child support until she reached age twenty-two or completed her education.

Section 452.340.3(5) RSMo (1994) provides that, "unless the circumstances of the child manifestly dictate otherwise and the court specifically so provides," a parent's child support obligation terminates when a child reaches age eighteen, unless subsections 4 or 5 apply. Subsection 5 of Section 452.340 RSMo (1994) provides in part as follows:

> [i]f the child is enrolled in an institution of vocational or higher education not later than October first following graduation from a secondary school and so long as the child continues to attend such institution of vocational or higher education, the parental support obligation shall continue until the child completes his education, or until the child reaches the age of twenty-two, whichever first occurs. If the circumstances of the child manifestly dictate, the court may waive the October first deadline for enrollment required by this subsection. . . . As used in this section, an "institution of vocational education" means any postsecondary training or schooling for which the student is assessed a fee and attends classes regularly. "Higher education" means any junior college, college, or university at which the child attends classes regularly.

Courts have liberally construed what constitutes an institution of vocational education or higher education. See McIlroy v. Simmons, 832 S.W.2d 949 (Mo. App. 1992) (technical accounting institute in Italy which did not charge a fee); State ex rel. Division of Child Support Enforcement v. Gosney, 928 S.W.2d 892 (Mo. App. 1996) (unaccredited bible college). Courts have further liberally construed course load requirements. A full-time course load is not required. Mayes v. Fisher, 854 S.W.2d 430 (Mo. App. 1993) (a three-hour community college class); Harris v. Rattini, 855 S.W.2d 410 (Mo. App. 1993) (less than full-time course load).

Where attendance is not continuous, three elements must be present to waive the statute's requirement that support continue "so long as the child continues to attend such institution": (1) interruption from enrollment is temporary; (2) an intention to re-enroll is evident; and (3) manifest circumstances prevent continuous enrollment. Daily v. Daily, 912 S.W.2d 110 (Mo. App. 1995). "Manifest circumstances" are those which are beyond a child's control. Id. at 113. Our courts have found such circumstances where there have been temporary interruptions in attendance which are beyond the child's control. See McNair v. Jones, 892 S.W.2d 338 (Mo. App. 1995) (father's lack of financial support); Braun v. Lied, 851 S.W.2d 93, 94 (Mo. App. 1993) (illness). However, when circumstances are within the child's control, a temporary interruption in enrollment does not allow the court to waive the continuous attendance requirement. Daily, 912 S.W.2d at 112-13.

In this case, although daughter's absence from college was temporary and her intention to re-enroll was evident, her absence was voluntary. Although her employment during her absence related to her major, she received no college credit for it and she took no classes during that time. She was not enrolled in or attending an educational institution. The trial court did not err in determining as a matter of law that daughter was not entitled to further child support under Section 452.340.5 RSMo (1994).

JURISDICTIONAL ISSUE

On October 16, 1996 the family court commissioner entered a "Judgment/Order" granting father's motion for summary judgment. Mother did not file a motion for rehearing by a judge of the family court. Mother appeals from the ruling of the commissioner.

Although neither party raises the issue of appellate jurisdiction, it is our duty to do so sua sponte. McKean v. St. Louis County, 936 S.W.2d 184, 185 (Mo. App. 1996).

In appealing directly from the ruling of the commissioner, mother was relying on Section 487.030.1 RSMo (1996 Supp.) which was amended effective May 15, 1996 to provide that "[i]n cases which are not IV-D cases, findings and recommendations of the commissioner shall become the judgment of the court when entered by the commissioner." Previously, the statute required the commissioner to transmit his or her findings and recommendations to a judge. Section 487.030.1 RSMo (1994). Under the previous versions of the statute, the findings and recommendations of the commissioner did not become the decree of the court unless and until adopted and confirmed by an order of a judge. Section 487.030.2 RSMo (1994). Under the previous versions of Section 487.030, a commissioner was not a judge and could not enter judgments. See In Interest of R.M.M., 902 S.W.2d 355, 358 (Mo. App. 1995); In re Marriage of McMillin, 908 S.W.2d 860, 861-62 (Mo. App. 1995).

The issue thus posed is whether this statute creates an appealable judgment. Rule 74.01(a) provides:

> "**Judgment**" as used in these rules includes a decree and any order from which an appeal lies. A **judgment** is rendered when entered. A **judgment** is entered when a writing signed by the **judge** and denominated "**judgment**" is filed. The **judgment** may be a separate document or included on the docket sheet of the case.

(emphasis added).

Under this rule, a judgment must be (1) in writing, (2) signed by the judge, (3) denominated "judgment," and (4) filed. Chambers v. Easter Fence Co., Inc., 943 S.W.2d 863, 865 (Mo. App. 1997). The rule also clearly applies to orders from which an appeal lies. Id. We explained in Chambers:

> "Otherwise, the requirements of a writing signed by the judge and filing would not apply to appealable orders. This would create two different tests for when an appealable order is entered and when a judgment is entered."

Id.

Rule 74.01 is procedural and was adopted pursuant to the Court's authority to enact rules relating to practice and procedure under article V, Section 5 of the Missouri Constitution. City of St. Louis v. Hughes, 950 S.W.2d 850, 853 (Mo. banc 1997). "Procedural law prescribes a method of enforcing rights or obtaining redress for their invasion; substantive law creates, defines and regulates rights; the distinction between substantive law and procedural law is that substantive law relates to the rights and duties giving rise to the cause of action, while procedural law is the machinery used for carrying on the suit." Wilkes v. Missouri Highway and Transportation Commission, 762 S.W.2d 27, 28 (Mo. banc 1988). Rule 74.01 does not "change" the right of appeal, but prescribes the method to create an appealable judgment. Because Rule 74.01 is procedural, it controls this case unless specifically annulled or amended by the legislature. State v. Reese, 920 S.W.2d 94, 95 (Mo. banc 1996), which holds:

> "This Court has the power to make procedural rules governing all legal matters subject only to the limitations of federal law and the Missouri Constitution." Berdella v. Pender, 821 S.W.2d 846, 850 (Mo. banc 1991). The Constitution grants this Court power to "establish rules relating to practice, procedure and pleading for all courts . . . which shall have the force and effect of law. . . ." Mo. Const., Art. V, § 5. This Court's rules may not "change substantive rights, or . . . the right of appeal." Id. "Supreme Court rules govern over contradictory statutes in procedural matters unless the General Assembly specifically annuls or amends the rules in a bill limited to that purpose." Ostermueller v. Potter, 868 S.W.2d 110, 111 (Mo. banc 1993).

The General Assembly did not specifically annul or amend Rule 74.01 (a) by amending Section 487.030.1. To obtain an appealable judgment after a commissioner has entered findings and recommendations under Rule 127 and Section

487.030.1 RSMo (1996 Supp.), a party must file a motion for rehearing as set out in both Rule 127 and the statute, and obtain an order signed by a judge.

We are aware that one of our appellate courts has treated a commissioner as a judge for purposes of a motion for change of judge under Rule 51.05. See State ex rel. Kramer v. Walker, 926 S.W.2d 72 (Mo. App. 1996). In State ex rel. Roedel v. Yates, 926 S.W.2d 521 (Mo. App. 1996) this court agreed with the reasoning in Kramer to hold that a commissioner had the authority to sign and execute a warrant and commitment order. However, no case has held that a commissioner is a judge as created and defined by the Missouri Constitution for the purposes of entering a judgment under Rule 74.01(a). Rather, there is a serious question whether the portion of Section 487.030.1 RSMo (1996 Supp.) which makes a commissioner's findings and recommendations a judgment of the court without any action by a judge is constitutional. See In re Marriage of Bloom, 926 S.W.2d 512, 515-16 (Mo. App. 1996). Resolution of this question of the validity of this statute is within the exclusive jurisdiction of the Missouri Supreme Court. Mo. Const. Art. V § 3.

Because of the question of the validity of this statute and the general interest and importance of this jurisdictional question, we transfer this case to the Missouri Supreme Court. Rule 83.02.

/s/______________________________
Kathianne Knaup Crane, Presiding Judge

Mary Rhodes Russell, J. and James R. Dowd, J., concur.

APPENDIX Y

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
DIVISION TWO

[Filed November 25, 1997]

No. 72106

In re the Marriage of)
Toby Ruth Slay and)
Alan Lee Slay)
)
TOBY RUTH SLAY,)
)
Petitioner/Appellant,)
)
v.)
)
ALAN LEE SLAY,)
)
Respondent/Respondent.)
)

Appeal from the Circuit Court of St. Louis County
Honorable M. Zane Yates
Family Court Commissioner

On January 15, 1997 the family court commissioner entered a "Judgment/Order" overuling wife's motion to enter a Qualified Domestic Relations Order. Wife did not file a motion for rehearing by a judge of the family court and appeals from the commissioner's ruling.

Although neither party raises the issue of appellate jurisdiction, it is our duty to do sua sponte. McKean v. St. Louis County, 936 S.W.2d 184, 185 (Mo. App. 1996). The family court commissioner entered a "Judgment/Order" overruling wife's motion to enter a Qualified Domestic Relations Order. The "Judgment/Order" in this case was signed by a commissioner pursuant to Section 487.030.1 RSMo (1996 Supp.) and not by a judge as required by Rule 74.01(a). This raises both a jurisdictional question and a question of the validity of Section 487.030.1 (1996 Supp.), which gives a commissioner the power to enter judgment. Because the question regarding the validity of this statute is exclusively within the jurisdiction of the Missouri Supreme Court and because of the general interest and importance of this jurisdictional question, we transfer to the Missouri Supreme Court. Rule 83.02.

In appealing directly from the ruling of the commissioner, wife was relying on Section 487.030.1 RSMo (1996 Supp.) which was amended effective May 15, 1996 to provide that "[i]n cases which are not IV-D cases, findings and recommendations of the commissioner shall become the judgment of the court when entered by the commissioner." Previously, the statute required the commissioner to transmit his or her findings and recommendations to a judge. Section 487.030.1 RSMo (1994). Under the previous versions of the statute, the findings and recommendations of the commissioner did not become the decree of the court unless and until adopted and confirmed by an order of a judge.

Section 487.030.2 RSMo (1994). Under the previous versions of Section 487.030, a commissioner was not a judge and could not enter judgments. See In Interest of R.M.M., 902 S.W2d 355, 358 (Mo. App. 1995); In re Marriage of McMillin, 908 S.W.2d 860, 861-62 (Mo. App. 1995).

The issue thus posed is whether this statute creates an appealable judgment. Rule 74.01(a) provides:

> **"Judgment"** as used in these rules includes a decree and any order from which an appeal lies. A **judgment** is rendered when entered. A **judgment** is entered when a writing signed by the **judge** and denominated **"judgment"** is filed. The **judgment** may be a separate document or included on the docket sheet of the case.

(emphasis added).

Under this rule, a judgment must be (1) in writing, (2) signed by the judge, (3) denominated "judgment," and (4) filed. Chambers v. Easter Fence Co., Inc., 943 S.W.2d 863, 865 (Mo. App. 1997). The rule also clearly applies to orders from which an appeal lies. Id. We explained in Chambers:

> "Otherwise, the requirements of a writing signed by the judge and filing would not apply to appealable orders. This would create two different tests for when an appealable order is entered and when a judgment is entered."

Id.

Rule 74.01 is procedural and was adopted pursuant to the Court's authority to enact rules relating to practice and procedure from article V, Section 5 of the Missouri Constitution. City of St. Louis v. Hughes, 950 S.W.2d 850, 853 (Mo. banc 1997). "Procedural law prescribes a method of enforcing rights or obtaining redress for their invasion; substantive law creates, defines and regulates rights; the distinction between substantive law and procedural law is that substantive law relates to the rights and duties giving rise to the cause of action, while procedural law is the machinery used for carrying on the suit." Wilkes v. Missouri Highway and Transportation Commission, 762 S.W.2d 27, 28 (Mo. banc 1988). Rule 74.01 does not "change" the right of appeal, but prescribes the method to create an appealable judgment. Because Rule 74.01 is procedural, it controls this case unless specifically annulled or amended by the legislature. State v. Reese, 920 S.W.2d 94, 95 (Mo. banc 1996), which holds:

> "This Court has the power to make procedural rules governing all legal matters subject only to the limitations of federal law and the Missouri Constitution." Berdella v. Pender, 821 S.W.2d 846, 850 (Mo. banc 1991). The Constitution grants this Court power to "establish rules relating to practice, procedure and pleading for all courts . . . which shall have the force and effect of law . . . ." Mo. Const., Art. V, § 5. This Court's rules may not "change substantive rights, or . . . the right of appeal." Id. "Supreme Court rules govern over contradictory statutes in procedural matters unless the General Assembly specifically annuls or amends the rules in a bill limited to that purpose."

Ostermueller v. Potter, 868 S.W.2d 110, 111 (Mo. banc 1993).

The General Assembly did not specifically annul or amend Rule 74.01(a) by amending Section 487.030.1. To obtain an appealable judgment after the commissioner has entered findings and recommendations under Rule 127 and Section 487.030.1 RSMo (1996 Supp.), a party must file a motion for rehearing as set out in both Rule 127 and the statute, and obtain an order signed by a judge.

We are aware that one of our appellate courts has treated a commissioner as a judge for purposes of a motion for change of judge under Rule 51.05. See State ex rel. Kramer v. Walker, 926 S.W.2d 72 (Mo. App. 1996). In State ex rel. Roedel v. Yates, 926 S.W.2d 521 (Mo. App. 1996) this court agreed with the reasoning in Kramer to hold that a commissioner had the authority to sign and execute a warrant and commitment order. However, no case has held that a commissioner is a judge as created and defined by the Missouri Constitution for the purposes of entering a judgment under Rule 74.01(a). Rather, there is a serious question whether the portion of Section 487.030.1 RSMo (1996 Supp.) which makes a commissioner's findings and recommendations a judgment of the court without any action by a judge is constitutional. See In re Marriage of Bloom, 926 S.W.2d 512, 515-16 (Mo. App. 1996). Resolution of this question of the validity of this statute is within the exclusive jurisdiction of the Missouri Supreme Court. Mo. Const. Art. V § 3.

Because of the question of the validity of this statute and because of the general interest and importance of this jurisdictional question, we transfer this case to the Missouri Supreme Court. Rule 83.02.

/s/________________________________
Kathianne Knaup Crane, Presiding Judge

Mary Rhodes Russell, J. and James R. Dowd, J., concur.

APPENDIX Z

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[Filed January, 8, 2001]

No. 99-3515EMSL

Charles H. Sturgeon,)
Appellant,)
)
v.)
)
Duane Benton, et al.,)
Appellees.)
)

Order Denying Petition for Rehearing and for Rehearing En Banc

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

January 8, 2001

Order Entered at the Direction of the Court:

/s/____________________
Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX AA

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

CONSTITUTION OF THE UNITED STATES OF AMERICA

Article XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 21 - CIVIL RIGHTS
SUBCHAPTER I - GENERALLY

42 U.S.C. Section 1983
Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(Pub. L. 96-170, Sec. 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104-317, title III, Sec. 309(c), Oct. 19, 1996, 110 Stat. 3853.)

42 U.S.C. Section 1985
Conspiracy to interfere with civil rights

* * * * *

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to

deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or

advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

(R.S. Sec. 1980.)

42 U.S.C. Section 1986
Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

(R.S. Sec. 1981.)

FEDERAL RULES OF CIVIL PROCEDURE RULE 8. GENERAL RULES OF PLEADING

Fed R.Civ.P. 8(b)--Defenses; Form of Denials.

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

Fed R.Civ.P. 8(d)–Effect of Failure To Deny.

Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(Fed R.Civ.P. 8 amended Feb. 28, 1966, eff. July 1, 1996; Mar. 2, 1987, eff. Aug. 1, 1987)

MISSOURI CONSTITUTION–ARTICLE V
JUDICIAL DEPARTMENT

Section 5–Rules of practice and procedure - duty of Supreme Court - power of legislature.

The supreme court may establish rules relating to practice, procedure and pleading for all courts and administrative tribunals, which shall have the force and effect of law. The rules shall not change substantive rights, or the law relating to evidence, the oral examination of witnesses, juries, the right of trial by jury, or the right of appeal. The court shall publish the rules and fix the day on which they take effect, but no rule shall take effect before six months after its publication. Any rule may be annulled or amended in whole or in part by a law limited to the purpose.

(Amended August 3, 1976)

Section 11–Want of jurisdiction, effect - transfers.

In all proceedings reviewable on appeal by the supreme court or the court of appeals, appeals shall go directly to the court or district having jurisdiction, but want of jurisdiction shall not be ground for dismissal, and the proceeding shall be transferred to the appellate court having jurisdiction. An original action filed in a court lacking jurisdiction or venue shall be transferred to the appropriate court.

(Amended August 4, 1970; Amended August 3, 1976)

Section 18–Judicial review of action of administrative agencies - scope of review.

All final decisions, findings, rules and orders on any administrative officer or body existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights, shall be subject to direct review by the courts as provided by law; and such review shall include the determination whether the same are authorized by law, and in cases in which a hearing is required by law, whether the same are supported by competent and substantial evidence upon the whole record. Unless otherwise provided by law, administrative decisions, findings, rules and orders subject to review under this section or which are otherwise subject to direct judicial review, shall be reviewed in such manner and by such court as the supreme court by rule shall direct and the court so designated shall, in addition to its other jurisdiction, have jurisdiction to hear and determine any such review proceeding.

(Amended August 3, 1976)

(This was § 22 of Art. V prior to 1976)

MISSOURI REVISED STATUTES–CHAPTER 487 FAMILY COURTS

Section 487.030–Transmitting of papers upon conclusion of hearing - notice of findings - motion for hearing - time period for final decision

1. In IV-D cases, as defined in section 452.345, RSMo, the findings and recommendations of the commissioner shall become the judgment of the court when adopted and confirmed by an order of the judge. In cases which are not IV-D cases, finding and recommendations of the commissioner shall become the judgment of the court when entered by the commissioner. Notice of the findings of the commissioner, together with a statement relative to the right to file a motion for rehearing, shall be given to the parties whose case has been heard by the commissioner, and to any other person that the court may direct. This notice may be given at the hearing, or by mail or other service directed by the court.

2. The parties to a cause of action heard by a commissioner are entitled to file with the court a motion for a hearing by a judge of the family court either within fifteen days after receiving notice of the findings of the commissioner at the hearing, or within fifteen days after the mailing, or within fifteen days after other service directed by the court. In cases in which the family court has jurisdiction pursuant to subdivision (1) of subsection 1 of section 211.031, RSMo, the juvenile officer, in addition to the parties listed above, is also entitled to file with the court a motion for a hearing by a judge of the family court within fifteen days after receiving notice of the findings of the

commissioner. The judge shall promptly rule on such motion and, in his discretion, may either sustain or deny the motion, and if the motion is sustained, the judge shall set a date for a hearing. If the motion for rehearing is not ruled on within forty-five days after the motion is filed, it is denied for all purposes. In computing the forty-five days, no day shall be counted during which the court lacks power to act because of an order of a superior court.

(L. 1993, H.B. No. 346, § A(§ 2). Amended by L.1995, S.B. No. 174, § A; L.1996, H.B. No. 1619, § A. eff. May 15, 1996.)

MISSOURI REVISED STATUTES--CHAPTER 511 JUDGMENTS

Section 511.020--Judgment defined.

A "judgment" is the final determination of the right of the parties in the action.

(RSMo 1939,§ 1236) (Prior revisions: 1929 § 1070; 1919 § 1521; 1909 § 2090)

MISSOURI REVISED STATUTES--CHAPTER 512 APPEALS AND APPELLATE PROCEDURE

Section 512.020--Who may appeal.

Any party to a suit aggrieved by any judgment of any trial court in any civil cause from which an appeal is not prohibited by the constitution, nor clearly limited in special statutory proceedings, may take his appeal to a court having appellate jurisdiction from any order granting a new trial, or order

refusing to revoke, modify, or change an interlocutory order appointing a receiver or receivers, or dissolving an injunction, or from any interlocutory judgments in actions of partition which determine the rights of the parties, or from any final judgment in the case or from any special order after final judgment in the cause; but a failure to appeal from any action or decision of the court before final judgment shall not prejudice the right of the party so failing to have the action of the trial court reviewed on an appeal taken from the final judgment in the case.

(RSMo 1939 § 1184, A.L. 1943 p. 353 § 126) (Prior revisions: 1929 § 1018; 1919 § 1469; 1909 § 2038)

MISSOURI REVISED STATUTES--CHAPTER 513 EXECUTIONS AND EXEMPTIONS

Section 513.015--Executions, who may have.

The party in whose favor any judgment, order or decree is rendered, may have an execution in conformity therewith.

(RSMo 1939 § 1316) (Prior revisions: 1929 § 1152; 1919 § 1603; 1909 § 2172)

MISSOURI REVISED STATUTES--CHAPTER 521 ATTACHMENTS

Section 521.010--Attachment, when issued - parties to - causes for.

In any court having competent jurisdiction, the plaintiff in any civil action may have an attachment against the property of the defendant, or that of any one or more of several defendants, in any one or more of the following cases:

(1) Where the defendant is not a resident of this state;

(2) Where the defendant is a corporation, whose chief office or place of business is out of this state;

(3) Where the defendant conceals himself, so that the ordinary process of law cannot be served upon him;

(4) Where the defendant has absconded or absented himself from his usual place of abode in this state, so that the ordinary process of law cannot be served upon him;

(5) Where the defendant is about to remove his property or effects out of this state, with the intent to defraud, hinder or delay his creditors;

(6) Where the defendant is about to remove out of this state, with the intent to change his domicile;

(7) Where the defendant has fraudulently conveyed or assigned his property or effects, so as to hinder or delay his creditors;

(8) Where the defendant has fraudulently concealed, removed or disposed of his property or effects, so as to hinder or delay his creditors;

(9) Where the defendant is about fraudulently to convey or assign his property or effects, so as to hinder or delay his creditors;

(10) Where the defendant is about fraudulently to conceal, remove or dispose of his property or effects, so as to hinder or delay his creditors;

(11) Where the cause of action accrued out of this state, and the defendant has absconded, or secretly removed his property or effects into this state;

(12) Where the damages for which the action is brought are for injuries arising from the commission of some felony or misdemeanor, or for the seduction of any female;

(13) Where the debtor has failed to pay the price or value of any article or thing delivered, which by contract, he was bound to pay upon the delivery;

(14) Where the debt sued for was fraudulently contracted on the part of the debtor.

(RSMo 1939 § 1438) (Prior revisions: 1929 § 1274; 1919 § 1725; 1909 § 2294)

Section 521.030--The affidavit.

An affidavit alleging any one of the causes set forth in the several subdivisions of section 521.010, in the language of such subsection, shall be held good and sufficient.

(RSMo 1939 § 1440) (Prior revisions: 1929 § 1276; 1919 § 1727; 1909 § 2296)

Section 521.870--Proceedings for the distribution of money.

Whenever money made on any execution or executions or other writ or writs is brought into the court out of which the eldest of such executions or other writs was issued, such court shall order the distribution or payment of such money on the motion of any person interested therein and on such notice as the court may, by rule or otherwise, direct. On his compliance with such order, the officer returning such execution or executions or other writ or writs shall be discharged of his liability for such money; but from any such final order an appeal shall lie as in other cases, and nothing herein contained shall be construed to discharge any officer from liability for not properly executing any process or for a false return thereon.

(RSMo 1939 § 15697) (Prior revision: 1929 § 14749)

MISSOURI REVISED STATUTES--CHAPTER 525 GARNISHMENTS

Section 525.010--Who may be summoned as garnishees,

All persons shall be subject to garnishment, on attachment or execution, who are named as garnishees in the writ, or have in their possession goods, moneys or effects of the defendant not actually seized by the officer, and all debtors of the defendant, and such others as the plaintiff or his attorney shall direct to be summoned as garnishees.

(RSMo 1939 § 1560) (Prior revisions: 1929 § 1396; 1919 § 1846; 1909 § 2413)

Section 525.130--Plaintiff may exhibit interrogatories against garnishees - interrogatories, when filed.

The plaintiff may exhibit in the cause written interrogatories touching the property, effects and credits attached in the hands of any garnishee, and require such garnishee to make full, direct and true answers to the same, upon oath; which interrogatories shall be filed at the return term of the writ, and within the first three days thereof, if the term shall so long continue, and if not, then before the end of the term, and not afterward, unless for good cause shown the court shall order otherwise.

(RSMo 1939 § 1572) (Prior revisions: 1929 § 1408; 1919 § 1858; 1909 § 2425)

MISSOURI RULES--MISSOURI BAR AND JUDICIARY RULE 4--PROFESSIONAL CONDUCT

Rule 4.9.1--Definition Of Terms

As used throughout the Rules of Professional Conduct, unless the context otherwise requires, the following terms have the following meanings:

"Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances;

"Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question;

"Firm" or "law firm" denotes a lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization and lawyers employed in a legal services organization; See Comment, Rule 1.10.

"Fraud" or "fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information;

"Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances;

"Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation and a member of a law firm organized as a limited liability company;

"Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer;

"Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable;

"Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question;

"Rule" or "rules" denotes subdivisions of this Supreme Court Rule 4;

"Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(Amended Sept. 28, 1993, effective Jan. 1, 1994.)

MISSOURI RULES--RULES OF CIVIL PROCEDURE RULE 73.01 TRIAL WITHOUT JURY OR WITH AN ADVISORY JURY - PROCEDURE

Rule 73.01(a)(3)

(Text effective Jan. 1, 1995 until Jan 1., 1997.)

The court shall render such judgment that it thinks proper under the law and the evidence. If any party so requests before final submission of the case, the court shall dictate to the court reporter, or prepare and file, a brief opinion containing a statement of the grounds for its decision and the method of determining any damages awarded; and may, or if requested by counsel shall, include in its findings on such controverted fact issues as have been specified by counsel. All fact issues upon which no specific findings are made shall be considered as having been found in accordance with the result reached.

Rule 73.01(a)(3)

(Text effective Jan. 1, 1997 until Jan 1., 2000.)

The court shall render the judgment it thinks proper under the law and the evidence. If a party so requests, the court shall dictate to the court reporter or prepare and file a brief opinion containing a statement of the grounds for its decision and the method of deciding any damages awarded. The court may, or if requested by a party shall, include in the opinion findings on the controverted fact issues specified by the party. Any request for an opinion or findings of fact shall be made on the record before the introduction of evidence at trial or at such later time as the court may allow. All fact issues upon which no specific findings are made shall be considered as having been found in accordance with the result reached.

Rule 73.01(a)(4)

(Text effective Jan. 1, 1995 until Jan 1., 2000.)

Not later than thirty days after the entry of judgment, a party may, but need not, file a motion for new trial. The motion may, but need not, be accompanied by a motion to amend the judgment or opinion in accordance with Rule 73.01(a)(5).

Rule 73.01(b)

(Text effective Jan. 1, 1995 until Jan 1., 2000.)

For appellate review of cases tried without a jury or with an advisory jury, neither a motion for new trial nor a motion to amend the judgment is necessary to preserve any matter for appellate review.

(All Rule 73.01(unless noted): Adopted March 29, 1974, effective Jan. 1, 1975. Amended June 5, 1980, effective Jan. 1, 1981; June 1, 1993, effective Jan. 1, 1994; Feb. 22, 1994, effective Jan. 1, 1995; May 28, 1996, effective Jan. 1, 1997.)

MISSOURI RULES–RULES OF CIVIL PROCEDURE
RULE 74.01 JUDGMENT

Rule 74.01(a)

Included Matters. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment is rendered when entered. A judgment is entered when a writing signed by the judge and denominated "judgment" is filed. The judgment may be a separate document or included on the docket sheet of the case.

(Amended Feb. 22, 1994, effective Jan. 1, 1995. Does not include "or denominated decree" change adopted Sept. 10, 1997, effective July 1, 1998.)

MISSOURI RULES–RULES OF CIVIL PROCEDURE
RULE 85. ATTACHMENTS

Rule 85.02–Availability Of Attachment

After the commencement of a civil action a party who presents therein a claim by petition, counterclaim, cross-claim or third-party petition may obtain a writ of attachment upon compliance with this Rule 85.

(Adopted June 10, 1980, effective Jan. 1, 1981.)

Rule 85.03–Affidavit To Obtain Writ Of Attachment

When a party requests a writ of attachment an affidavit shall be filed stating:

(a) The nature and amount of the claim; and

(b) Facts showing the existence of one or more of the grounds for attachment set forth in Section 521.010, RSMo.

(Adopted June 10, 1980, effective Jan. 1, 1981.)

Rule 85.08–Claimant To Furnish Bond-Exception-Conditions Of Bond

(a) Claimant to Furnish Bond. The claimant shall file a sufficient bond, approved by the court, executed by the claimant as principal and one or more sufficient sureties to the effect that they are bound to the State of Missouri in an amount set by the court but not exceeding double the amount claimed.

(b) Conditions of Bond. The conditions of the bond shall be that the claimant shall:

(1) Prosecute all claims without delay and with effect;

(2) Refund all sums of money that may be adjudged to be refunded to the owner of the property or found to have been received by the claimant and not justly due;

(3) Pay all damages and costs that may accrue to the owner of the property, any garnishee or interpleader by reason of the attachment, or any process or proceeding in the action, or by reason of any judgment or process thereon; and

(4) Pay all damages and costs that may accrue to any sheriff or other officer by reason of acting under the writ of attachment, following the instructions of the claimant.

(c) When No Bond Required. If the State or a county is a claimant in its own behalf no bond shall be required.

(Adopted June 10, 1980, effective Jan. 1, 1981. Amended Sept. 28, 1993, effective Jan. 1, 1994.)

MISSOURI RULES--RULES OF CIVIL PROCEDURE RULE 90. GARNISHMENTS AND SEQUESTRATION

Rule 90.01--Property Subject To Garnishment

The term "Property subject to garnishment" as used in this Rule 90 means all goods, personal property, money, credits, bonds, bills, notes, checks, choses in action, or other effects of defendant and all debts owed to defendant

(Adopted June 10, 1980, effective Jan. 1, 1981)

Rule 90.13--Interrogatories To Garnishee - Answers To Interrogatories - Exceptions - Response - Issues Tried

(a) Interrogatories - Time for Filing - Service. Prior to the issuance of the summons of garnishment, the garnishor shall file written interrogatories asking the garnishee to state the property subject to garnishment in the possession, charge or control of the garnishee. The interrogatories shall be served simultaneously with the summons of garnishment.

(b) Answer to Interrogatories--Time for Filing. The garnishee shall file and serve verified answers to the interrogatories within ten days after the return date of the writ.

(c) Exceptions to Answers to Interrogatories - Time for Filing. Within ten days after service of the answers, the garnishor may file exceptions to the answers asserting any ground upon which recovery is sought against the garnishee.

(d) Response to Exceptions-Time for Filing. Within ten days after service of the exceptions, the garnishee may file a response thereto.

(e) Issues Tried. The issues tried shall be those raised by the exceptions and response.

(Adopted June 10, 1980, effective Jan. 1, 1981. Amended Oct. 6, 1980, effective Jan. 1, 1981; Feb. 11, 1987, effective Jan. 1, 1988; Sept. 28, 1993, effective Jan. 1, 1994.)

MISSOURI RULES--JUVENILE COURT
RULE 127 FAMILY COURT COMMISSIONERS

Rule 127.04--Notice of Findings and Recommendations

(a) In each case heard by the commissioner, notice of the findings and recommendations of the commissioner, together with a statement of the right of rehearing, shall be given to the parties whose case has been heard by the commissioner and, where appropriate, the juvenile, the juvenile's custodian, and to any other person that the court may direct. This notice may be given at the hearing or by certified mail or other service directed by the court. Such notice shall be given in writing unless given to the parties in person or at the hearing.

(b) Upon the conclusion of the hearing, in each case the commissioner shall transmit to the judge all papers relating to the case, together with the commissioner's findings and recommendations in writing.

(Adopted Dec. 9, 1975, effective Aug. 1, 1976. Amended Feb. 2, 1995, effective Jan. 1, 1996.)

Rule 127.05--Motion for Rehearing - When Filed - Commissioner's Findings Final, When

Unless waived by the parties in writing, the parties to a cause of action heard by a commissioner, within fifteen days after receiving notice of the findings of the commissioner, may file a motion for rehearing by a judge of the family court. In cases in which the family court has jurisdiction pursuant to subdivision (1) of subsection 1 of Section 211.031 RSMo the juvenile officer, in addition to the parties listed above, may file with the court a motion for a hearing by a judge of the family court within fifteen days after receiving notice of the findings of the commissioner. The judge shall promptly sustain or deny the motion and, if sustained, set a date for rehearing. If the motion is denied, the findings and recommendations of the commissioner shall become the decree of the court upon adoption by order of the judge.

(Adopted Dec. 9, 1975, effective Aug. 1, 1976. Amended June 24, 1986, effective Jan. 1, 1987; Amended Feb. 2, 1995, effective Jan. 1, 1996.)

Rule 127.07–Rejection or Modification of Findings and Recommendations

The judge of the family court may reject the findings and recommendations of the commissioner, or the judge may amend or modify the findings and recommendations provided the amendment or modification does not substantially affect the rights or the parties. If the commissioner's findings and recommendations are rejected, the parties shall have a hearing de novo before the judge. If the commissioner's findings and recommendations are amended or modified, notice thereof shall be given to the parties in the same manner provided for notice of the original findings and recommendations of the commissioner. The right of the parties to a hearing on such amended or modified commissioner's recommendations shall be the same as provided for the original findings and recommendations of the commissioner, and said amended or modified findings or recommendations shall become the decree of the court if no hearing before the judge is requested within ten days after the parties have received notice of the amendment or modification.

(Adopted Dec. 9, 1975, effective Aug. 1, 1976. Amended Feb. 2, 1995, effective Jan. 1, 1996.)

MISSOURI RULES--JUVENILE COURT
RULE 129 FAMILY COURT COMMISSIONERS

(Rule 129 replaced Rule 127 above--not applicable during state trial court period of case. Adopted Jan 28, 1998. Amended Mar. 24, 1998, eff. Sept 1, 1998.)

Rule 129.02–Authority For Rule

This Rule 129 is promulgated pursuant to the authority granted this Court by article V, section 5 of the Constitution of Missouri and supersedes all statutes and existing court rules inconsistent therewith.

Rule 129.07--Notice of Findings and Recommendations

In each case heard by the commissioner, notice of the findings and recommendations of the commissioner, together with a statement that the matter is being transferred to a judge, shall be given to the parties whose case or proceeding has been heard by the commissioner and, where appropriate, to the juvenile, the juvenile's custodian and to any other person that the court may direct. This notice may be given at the hearing or by mail or other service directed by the court. The notice shall be given in writing unless given orally in person or at the hearing to the parties on the record.

Rule 129.08--Transmission of Findings and Recommendations To Judge

Upon the conclusion of the proceedings or case, the commissioner shall transmit to the administrative judge or such other judge as shall be designated by the administrative judge all papers relative to the proceedings or case, together with the commissioner's findings and recommendations in writing.

Rule 129.09–Adoption, Amendment, Modification or Rejection of Findings and Recommendations - Entry of Judgment - Ordering De Novo Hearing

(a) After receipt and review of the commissioner's findings and recommendations, the judge shall either adopt, as transmitted, amended or modified, or reject the findings and recommendations of the commissioner.

(b) If the judge adopts the findings and recommendations of the commissioner, the judge shall enter a judgment of the court.

(c) If the judge rejects the findings and recommendations of the commissioner, the judge shall schedule a hearing de novo before the judge. After the hearing, the judge shall enter a judgment of the court.

Rule 129.13--Motion for Rehearing - When Filed - When Overruled

(a) Unless waived by the parties in writing, a party to a case or proceeding heard by a commissioner, within fifteen days after the mailing of notice of the filing of the judgment of the court, may file a motion for rehearing by a judge of the court. The juvenile officer shall have no right to file a motion for rehearing of any judgment of the court in proceedings under subdivision (2) and (3) of subsection 1 of section 211.031, RSMo.

(b) The judge shall rule on the motion for rehearing promptly. If the motion for rehearing is not ruled on within forty-five days after the motion is filed, it is overruled for all purposes.

MISSOURI RULES, VOL. II
21ST JUDICIAL CIRCUIT
RULE 21.4 WITHDRAWAL OF ATTORNEYS

The conditions under which an attorney is allowed to withdraw from the employ of a client are set out in Rule 4, V.A.M.R. ("Code of Professional Responsibility"), Canon 2, Ethical Consideration 2-32 and Disciplinary Rule 2-110. Any attorney who desires to withdraw as attorney or record for any party to any action pending in the this Court shall comply with the following procedures:

(a) The attorney shall file a written motion requesting leave of Court to withdraw. If the case is then set for trial, the reason for the request must be set forth in the motion. Attached to the motion shall be a notice of the date and time at which the moving attorney will call up the motion before the Court for hearing.

(b) A copy of the motion and the notice shall be served upon all parties, including the client from whose employ the attorney is seeking leave to withdraw, in the manner provided by V.A.M.R. 43.01. If the case in which the attorney is seeking leave to withdraw is a criminal case, the notice shall instruct the client that the client *must* appear in person at the hearing.

(¶¶ (c), (d), (e) omitted.) (Eff. Nov. 1, 1991)

APPENDIX BB

IN THE CIRCUIT COURT OF THE
COUNTY OF ST. LOUIS
STATE OF MISSOURI
21ST JUDICIAL CIRCUIT

[Filed July 24, 1997]

CASE NUMBER: 609457

Garnishment No. ~~G104951~~ FC-11 (64)

ELAINE STURGEON,)
Petitioner,)
)
v.)
)
CHARLES STURGEON,)
Respondent.)
)

ORDER

Pursuant to the Judgment dated January 9, 1992, the sum of $1,183.00 due to Petitioner for child support and maintenance for the month of *May*(*), 1997 is hereby ordered

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[*] Italics or strikethrough denotes handwriting in original document.

paid from the funds in the Registry of the Court to Norton Y. Beilenson, Attorneys for Elaine Sturgeon, Petitioner.

SUSMAN, SCHERMER, RIMMEL & SHIFRIN L.L.C.

/s/ *Norton Y. Beilenson*
NORTON Y. BEILENSON, MBEN 17888
Aragon Place - Tenth Floor
7711 Cardondelet Avenue
St. Louis, Missouri 63105-3388
Telephone: (314) 725-7300
Telecopier: (314) 725-7288

Attorneys for Elaine Sturgeon

SO ORDERED:

/s/ *Victoria McKee* *7-24-97*
~~JUDGE~~ VICTORIA McKEE *comm* DATE
ST. LOUIS COUNTY CIRCUIT COURT
DIVISION FC 11

St. Louis Circuit Court Order 2 of 3 - 7/24/97

IN THE CIRCUIT COURT OF THE
COUNTY OF ST. LOUIS
STATE OF MISSOURI
21ST JUDICIAL CIRCUIT

[Filed July 24, 1997]

CASE NUMBER: 609457

Garnishment No. ~~G105066~~ FC-11 (64)

ELAINE STURGEON,)
Petitioner,)
)
v.)
)
CHARLES STURGEON,)
Respondent.)
)

ORDER

Pursuant to the Judgment dated January 9, 1992, the sum of $1,183.00 due to Petitioner for child support and maintenance for the month of *June*(*), 1997 is hereby ordered paid from the funds in the Registry of the Court to Norton Y. Beilenson, Attorneys for Elaine Sturgeon, Petitioner.

SUSMAN, SCHERMER, RIMMEL & SHIFRIN L.L.C.

---

*Italics or strikethrough denotes handwriting in original document.

/s/ *Norton Y. Beilenson*
NORTON Y. BEILENSON, MBEN 17888
Aragon Place - Tenth Floor
7711 Cardondelet Avenue
St. Louis, Missouri 63105-3388
Telephone: (314) 725-7300
Telecopier: (314) 725-7288

Attorneys for Elaine Sturgeon

SO ORDERED:

/s/ *Victoria McKee* *7-24-97*
~~JUDGE~~ VICTORIA McKEE *comm* DATE
ST. LOUIS COUNTY CIRCUIT COURT
DIVISION FC 11

St. Louis Circuit Court Order 3 of 3 - 7/24/97

IN THE CIRCUIT COURT OF THE
COUNTY OF ST. LOUIS
STATE OF MISSOURI
21ST JUDICIAL CIRCUIT

[Filed July 24, 1997]

CASE NUMBER: 609457

Garnishment No. ~~G105209~~ FC-11 (64)

ELAINE STURGEON,)
Petitioner,)
)
v.)
)
CHARLES STURGEON,)
Respondent.)
)

ORDER

Pursuant to the Judgment dated January 9, 1992, the sum of $1,183.00 due to Petitioner for child support and maintenance for the month of *July*(*), 1997 is hereby ordered paid from the funds in the Registry of the Court to Norton Y. Beilenson, Attorneys for Elaine Sturgeon, Petitioner.

SUSMAN, SCHERMER, RIMMEL & SHIFRIN L.L.C.

---

[*] Italics or strikethrough denotes handwriting in original document.

/s/ *Norton Y. Beilenson*
NORTON Y. BEILENSON, MBEN 17888
Aragon Place - Tenth Floor
7711 Cardondelet Avenue
St. Louis, Missouri 63105-3388
Telephone: (314) 725-7300
Telecopier: (314) 725-7288

Attorneys for Elaine Sturgeon

SO ORDERED:

/s/ *Victoria McKee* *7-24-97*
~~JUDGE~~ VICTORIA McKEE *comm* DATE
ST. LOUIS COUNTY CIRCUIT COURT
DIVISION FC 11

APPENDIX CC

LAW OFFICES OF TIMOTHY HOGAN
705 OLIVE STREET • SUITE 820
ST. LOUIS, MO 63101

FAX
(314) 241-2171 (314) 241-8004

March 7, 1997

Mr. Norton Y. Beilenson
Susman, Schermer, Rimmel & Shifrin L.L.C.
Aragon Place - Tenth floor
7711 Carondelet Avenue
St. Louis, Missouri 63105-3388

Re: Sturgeon v. Sturgeon

Dear Mr. Beilenson:

Pursuant to your telephone call and fax of March 5, 1997, I am sending you this letter in regards to this case. In accordance with my contract for employment, I have been hired to represent, settle or litigate Mr. Sturgeon's appeals on the two Motions for Contempt and the Motion to Modify relating to his divorce. . . .

Yours very truly,

/s/____________________
Timothy E. Hogan

APPENDIX DD

LAW OFFICES OF TIMOTHY HOGAN
705 OLIVE STREET • SUITE 820
ST. LOUIS, MO 63101

FAX
(314) 241-2171 (314) 241-8004

February 15, 1997

Mr. Charles Sturgeon
P.O. Box 32821
Olivette, Missouri 63123

Re: Sturgeon v. Sturgeon

Dear Mr. Sturgeon:

You are my client and have I have [sic] been paid by your mother to handle two specific pieces of litigation for you:

First, to handle the post-trial motions for your contempt and Motion to Modify proceedings, which have been completed, and;

Second, to handle the appeal or settlement of the contempt and Motion to Modify proceedings.

The Notice of Appeal in the contempt proceedings as well as the transcript fee have been filed with the Circuit Clerk. We await the decision, either affirmatively or by default, of

Commissioner McKee in regards to your Motion for New Trial in the Motion to Modify proceedings. We also await a decision on the parties' joint motions for attorneys' fees and costs on the appeal which were heard before Commissioner McKee.

. . . . .

Yours very truly,

/s/______________________
Timothy Eves Hogan

APPENDIX EE

[Filed February 14, 1997]

Cause No. 609457

ELAINE STURGEON,)
Petitioner,)
)
v.)
)
CHARLES STURGEON,)
Respondent.)
)

MOTION FOR COMMISSIONER TO ISSUE FINDINGS OF FACT, RECOMMENDATIONS AND A JUDGMENT ORDER ON RESPONDENT'S MOTION TO MODIFY

Comes now Respondent and by his counsel and pursuant to section 487.030 RSMo, requests Commissioner McKee to issue findings of fact, recommendation and an proposed Judgment Order in Respondent's Motion to Modify now pending before this Commissioner.

Respectfully Submitted,

/s/____________________
Timothy E. Hogan #37718
705 Olive Street, Ste. 820

St. Louis, Missouri 63101
(314) 241-2171 Office
(314) 241-8004 Fax
Attorney for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed first class, postage prepaid this 11th day of February, 1997 to: Norton Beilenson, Attorney for Petitioner, 7711 Carondelet Avenue, Tenth Floor, St. Louis, Missouri, 63105-3388.

/s/____________________
Timothy E. Hogan

APPENDIX FF

SUSMAN, SCHERMER, RIMMEL & SHIFRIN, L.L.C.

ATTORNEYS AND COUNSELORS
FOUNDED 1946

TENTH FLOOR ARAGON PLACE
7711 CARONDELET AVENUE
ST. LOUIS, MISSOURI 63105-3388

NORTON Y. BEILENSON

TELEPHONE (314) 725-7300
FACSIMILE (314) 725-7288

January 29, 1997

Honorable Victoria McKee
Judge, Division FC-11
St. Louis County Courthouse
7900 Carondelet Avenue
Clayton, Missouri 63105

Re: **Sturgeon v. Sturgeon**
Cause No. 609457

Dear Judge McKee:

Enclosed is the proposed Order with respect to the funds remaining in the Registry of the Court in the within case.

Would appreciate your please giving consideration to it.

Thank you.

Very truly yours,

SUSMAN, SCHERMER,
RIMMEL & SHIFRIN, L.L.C.

/s/ ________________________
Norton Y. Beilenson

NYB:mw

Enclosure:

cc: By Facsimile to Mr. Timothy Hogan
Attorney for Respondent

IN THE CIRCUIT COURT OFF [sic]
ST. LOUIS COUNTY, MISSOURI
21ST JUDICIAL CIRCUIT

[Filed ______]

Cause No. 609457

Division: FC-11

In re: The Marriage Of)
)
ELAINE STURGEON,)
Petitioner,)
)
and)
)
CHARLES HARVEY)
STURGEON,)
Respondent.)
)

Petitioner and Respondent's respective motions for attorneys' fees on appeal having been heard, argued and submitted, the Court orders that pending the Court's decision on said motions, no future pay-out orders be issued with respect to those monies presently being held in the Registry of the Court. This Order is subject to any future order of this Court.

The undersigned hereby certifies that a copy of the above and foregoing was sent by facsimile #241-8004 this 30 day of January, 1997, at 1:00 P.M., to: Mr. Timothy E. Hogan, attorney for Respondent.

SUSMAN, SCHERMER, RIMMEL & SHIFRIN L.L.C.

/s/________________________
NORTON Y. BEILENSON, MBEN 17888
Aragon Place - Tenth Floor
7711 Carondelet Avenue
St. Louis, Missouri 63105-3388
Telephone: (314) 725-7300
Telecopier: (314) 725-7288

Attorneys for Respondent [sic]

APPENDIX GG

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

INTERROGATORIES TO GARNISHEE

[Fold-out]

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

ELAINE STURGEON
PLAINTIFF

VS

CHARLES STURGEON
DEFENDANT

December 5, 1996
DATE

[redacted] C 103395
CASE NUMBER

FC 11
TEAM/DIVISION

INTERROGATORIES TO GARNISHEE

Registry of the Circuit Court of St. Louis County
7900 Carondelet Avenue
St. Louis, MO 63105
GARNISHEE

Charles Sturgeon
JUDGEMENT DEBTOR

INSTRUCTIONS: You are to answer interrogatories UNDER OATH within ten (10) days after the return date of the writ and mail the ORIGINAL to: ☒ OFFICE OF THE CIRCUIT CLERK
Pleadings Clerk, 5th Floor
7900 Carondelet Ave.
Clayton, MO 63105

☐ OFFICE OF THE CIRCUIT CLERK
Garnishment Section - Room 215
7900 Carondelet Ave.
Clayton, MO 63105

and a COPY to the attorney for the judgment creditor (or the judgment creditor individually if there is no attorney) listed below

1. At the time of service of garnishment, or at any time thereafter until the return date stated in the summons of garnishment, have you had in your possession or under your control any property, money (excluding wages, salary, and commissions), or effects of the judgment debtor? If so, state what property, how much of what value, and what money or effects.

his office currently holds sufficient funds to satisfy this garnishment in the amount of $10,307.96 from funds deposited by the Sheriff after an execution sale. The funds would be payable to respondent Charles Sturgeon, upon written request and court order.

2. At the time of service of the garnishment, or at any time thereafter until the return date stated in the summons of garnishment, did you owe the judgment debtor any money (including wages, salary, commissions), or do you owe the judgment debtor any now? IF NOT YET DUE, WHEN WILL IT BECOME DUE?

Same answer as to question 1.

If amount owed judgment debtor is for wages, salary, or commission state:

a. Amount owed after deductions required by law $ n/a (Deductions required by law are limited to federal, state, and city income and earnings taxes and FICA taxes).

b. Amount withheld pursuant to the garnishment $ n/a

3. Is the judgment debtor still within your employ? If not, state the date employment terminated.

Judgment debtor is not employed by Circuit Clerk's office of St. Louis County.

TATE OF MISSOURI
OUNTY OF ST. LOUIS) ss.

he undersigned being duly sworn, on oath states that e/she has read the foregoing interrogatories and he answers given are true to the best of affiant's ledge and belief.

Circuit Clerk
SIGNATURE OF GARNISHEE

he foregoing answers to interrogatories were subribed and sworn to me on 01-15-97

Charles R. Uhlig
NOTARY PUBLIC

My commission expires:

CHARLES R. UHLIG
NOTARY PUBLIC - STATE OF MISSOURI
ST LOUIS COUNTY
MY COMMISSION EXPIRES DEC. 12, 1999

Attorney for Judgment Creditor
FRANK SUSMAN #19984
NORTON Y. BEILENSON # 17888
SUSMAN, SCHERMER, RIMMEL & SHIFRIN, L.L.C.
7711 Carondelet Avenue - 10th Floor
St. Louis, MO 63105 (314) 725-7300

BEST AVAILABLE COPY

APPENDIX HH

LAW OFFICES OF TIMOTHY HOGAN
705 OLIVE STREET • SUITE 820
ST. LOUIS, MO 63101

(314) 241-2171

FAX
(314) 241-8004

December 16, 1996

Mr. Fadelle Sturgeon
300 Juanita Avenue
Sardis, MS 38666

Re: Charles Sturgeon

Dear Ms. Sturgeon:

Enclosed please find the Employment Contracts with regard to you son's case. Please sign these contracts, which represent the $6,500.00 you wired into my firm's account, and return them to me via Federal Express in the envelope I have enclosed.

Thank you for your time and cooperation in this matter. If you have any questions, please feel free to contact me.

Yours very truly,

/s/____________________
Timothy E. Hogan

Enclosures

Letter & Contracts from Hogan to F. Sturgeon

LAW OFFICES OF TIMOTHY HOGAN
705 OLIVE STREET • SUITE 820
ST. LOUIS, MO 63101

(314) 241-2171

FAX
(314) 241-8004

EMPLOYMENT CONTRACT

By my signature below I declare that I have retained the LAW OFFICES OF TIMOTHY HOGAN to represent *Charles Sturgeon*(*) in the matter of *Sturgeon v. Sturgeon, NOAs + appeals or settlement not including new trial on any contempt or motion to modify* for the agreed upon fee of $125.00 per hour/ a flat fee of $*5,000.00* to be paid in full at this time/ ~~to be paid with a down payment of $______ and $______ Per month until the balance is paid in full.~~

I understand that the monies paid are for attorney's fees only. The fees paid pursuant to this contract and note, if applicable, do not include any court costs, fines, crime victim's judgment, deposition costs, copying costs, medical records costs, long distance or collect telephone calls, secretarial assistance, investigative costs by persons other than Mr. Hogan or paralegal costs. I understand that any of the costs not included in the fees paid are my responsibility and agree that any failure to pay for services or costs on my part shall not be actionable against the LAW OFFICES OF TIMOTHY HOGAN or held to be negligence by the LAW OFFICES OF TIMOTHY HOGAN.

---

[*] Italics or strikethrough denotes handwriting in original document.

I further acknowledge that in the event that I should not pay any balance due and payable pursuant to this agreement that I will be responsible for any reasonable collections costs, including attorney fees. . . .

Letter & Contracts from Hogan to F. Sturgeon

LAW OFFICES OF TIMOTHY HOGAN
705 OLIVE STREET • SUITE 820
ST. LOUIS, MO 63101

(314) 241-2171 FAX (314) 241-8004

EMPLOYMENT CONTRACT

By my signature below I declare that I have retained the LAW OFFICES OF TIMOTHY HOGAN to represent *Charles Sturgeon*(*) in the matter of *Sturgeon v. Sturgeon, post trial motions prepared + filed, Excluding NOAs + appeals* for the agreed upon fee of $125.00 per hour/ a flat fee of $*1,500.00* to be paid in full at this time/ ~~to be paid with a down payment of $_____ and $______ Per month until the balance is paid in full.~~

I understand that the monies paid are for attorney's fees only. The fees paid pursuant to this contract and note, if applicable, do not include any court costs, fines, crime victim's judgment, deposition costs, copying costs, medical records costs, long distance or collect telephone calls, secretarial assistance, investigative costs by persons other than Mr. Hogan or paralegal costs. I understand that any of the costs not included in the fees paid are my responsibility and agree that any failure to pay for services or costs on my part shall not be actionable against the LAW OFFICES OF TIMOTHY HOGAN or held to be negligence by the LAW OFFICES OF TIMOTHY HOGAN.

---

[*] Italics or strikethrough denotes handwriting in original document.

I further acknowledge that in the event that I should not pay any balance due and payable pursuant to this agreement that I will be responsible for any reasonable collections costs, including attorney fees. . . .

APPENDIX II

MINUTES OF PROCEEDINGS OF ELAINE MARIE STURGEON VS. CHARLES HARVEY STURGEON

Case No. 609457(*)

21ST JUDICIAL CIRCUIT COURT			
DATE	REF CY	MINUTES OF PROCEEDINGS	CLERK
10/10 /95		*Petnr's motion to withdraw execution on resp's homestead filed. (entered on 10-27-95)*	*JM*
10/15 /96	02 02	THE COURT RECUSES ITSELF FROM HEARING MOTION FOR REHEARING FOR THE REASON THAT IT IS RELATED BY MARRIAGE TO COUNSEL FOR PETITIONER. CAUSE REASSIGNED TO JUDGE GOEKE FOR MOTION HEARING ONLY. JUDGE MELVYN W. WIESMAN, DIV 19	TMICH

---

[*] Italics denote handwriting in original document. Note that numerous in-between entries have been omitted.

06/03/97	01 02	GARNISHMENT REQUEST G104951 FILED	PSTUR
06/18/97	01 02	GARNISHMENT REQUEST G105066 FILED	PSTUR
07/09/97	01 02	GARNISHMENT REQUEST G105209 FILED	PSTUR

APPENDIX JJ

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

MOTION RULINGS OF JULY 14, 1997

71736 Sturgeon, Elaine, Resp. Vs. Sturgeon, Charles, App.
Pro-se mtn for directive to atty, and for ext. of time
DENIED

MOTION RULINGS OF JULY 16, 1997

71713 Sturgeon, Charles, App. Vs. Sturgeon, Elaine, Resp.
(sic) Mtn. for court assistance and extension of time is
DENIED.

71736 Sturgeon, Charles, App. Vs. Sturgeon, Elaine, Resp.
App. Pro se second mtn. for court assistance and
extension of time is denied.

MOTION RULINGS OF JULY 24, 1997

71736 Sturgeon, Elaine, Resp. Vs. Sturgeon, Charles, App.
Mtn for withdrawal of counsel by Timothy Hogan
DENIED

MOTION RULINGS OF JULY 29, 1997

71736 Sturgeon, Elaine, Resp. vs. Sturgeon, Charles, App.
App. Pro Se mtn for electronic file production
DENIED.

MOTION RULINGS OF AUGUST 13, 1997

71736 Sturgeon, Elaine, Resp. vs. Sturgeon, Charles, App.
App. mtn for hard copy file production DENIED.

MOTION RULINGS OF AUGUST 19, 1997

72855 Sturgeon, Elaine, Resp. vs. Sturgeon, Charles, App. Mtn for permission to utilize existing ROA DENIED.

MOTION RULINGS OF AUGUST 27, 1997

72855 Sturgeon, Elaine, Resp. vs. Sturgeon, Charles, App. App. mtn for permission to include non-cert. Document in legal file DENIED

MOTION RULINGS OF SEPTEMBER 3, 1997

72478 Sturgeon, Elain, (sic) Resp. vs. Sturgeon, Charles, App.
App. mtn to file ROA out of time GRANTED UNTIL OCTOBER 6, 1997. To file transcript, if any.

MOTION RULINGS OF SEPTEMBER 5, 1997

72855 Sturgeon, Elaine, Resp. vs. Sturgeon, Charles, App. On the Court's own mtn., App. granted to October 14, 1997 to file the ROA.

MOTION RULINGS OF SEPTEMBER 26, 1997

72478 Sturgeon, Elaine, Resp. vs. Sturgeon, Charles, App. App. mtn to amend appeal DENIED.

MOTION RULINGS OF OCTOBER 14, 1997

71736 Sturgeon, Elaine, Resp. vs. Sturgeon, Charles, App. On the Court's own mtn., Resp. granted to November 17, 1997 to file the Resp. brief.

72478 On the Court's own mtn., App. granted to December 15, 1997 to file the App. brief.

72855 On the Court's own mtn., App. granted to January 15, 1998 to file the ROA.

APPENDIX KK

MISSOURI APPELLATE PRACTICE AND EXTRAORDINARY REMEDIES

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Fourth Edition--1998 Cumulative Supplement

CHAPTER 2 APPEALS--WHO, WHAT, WHEN, WHERE AND HOW

IV. What Judgments Are Appealable and When They Must Be Appealed

A. (§2.9) Final Judgments in General

[Page 2-10]

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Comment: The appellate courts would better serve the purposes of the final judgment rule by earlier rulings on their jurisdiction. All too often, the appellate court orders that a motion to dismiss will be "taken with the case." The parties then brief and argue the merits, only to have the court ultimately rule that it lacks jurisdiction. A prompt order dismissing the appeal would avoid this needless waste of time and energy.

* * * * *

[Page 2 Sup. - 3, -4, -5, -6]

A. (§2.9) Final Judgments in General

The Supreme Court of Missouri has clarified this murky area of the law to some extent. A judgment is entered "when a writing signed by the judge and denominated 'judgment' is filed." Rule 74.01(a). The point of this requirement is to establish a 'bright line" so that both judges and parties know when a judgment has been entered. *St. Louis v. Hughes,* 950 S.W.2d 850 (Mo. banc 1997). Unfortunately, the line is not as bright as one might wish.

In *Kessinger v. Kessinger,* 935 S.W.2d 347 (Mo. App. S.D. 1996), the jury returned a verdict for the defendant. On the same day, the trial judge wrote on the docket that "The Court enters Judgment in favor of the defendant and initialed the docket entry. Four months later, the trial court filed a separate document styled "Judgment Upon Jury Verdict." The appellate court held that the initials constituted a signature. The court also held that the docket entry standing alone was a judgment and dismissed an appeal as untimely. *Id.* at 349.

Because the rule expressly provides that the judgment may be either a separate document or included on the docket sheet, the *Kessinger* result is reasonable enough. But the court relied on older cases to hold that "the apparent intent of the trial judge as to whether an entry is the judgment remains an appropriate consideration." *Id.* at 350. The trial court's "apparent intention" is hardly susceptible to a bright line test.

In *Linzenni v. Hoffman,* 937 S.W.2d 723 (Mo. banc 1997), a dissolution proceeding, the trial judge filed a letter to the parties on July 13, 1995. The letter recited "the court's intention . . . that Judgment in the case is made this date" *id.* at 724, and requested that the petitioner's attorney prepare a formal decree. The trial court also filed a worksheet stating that the marriage was "ORDERED DISSOLVED." *Id.* at 726. The petitioner died the next day, and the issue was whether the death abated the proceeding or whether the marriage had been validly dissolved before his death. The Supreme Court held that the worksheet stating that the marriage was "ORDERED DISSOLVED" was "unquestionably a valid order." The Court also held that Rule 74.01(a) was irrelevant because whether the dissolution proceeding had abated was a substantive issue not controlled by the rule. *Linzenni* at 726. Two judges dissented on the ground that there could be no final judgment absent compliance with the rule, and, without a final judgment, the action automatically abated. *Linzenni* at 727.

As the dissent observes, *Linzenni* presents an especially compelling case for finding a valid final judgment. But it also presents a substantial likelihood of reintroducing the very confusion that the new rule was designed to prevent. The holding that "ORDERED DISSOLVED," *Linzenni* at 726, is sufficient to make a final judgment is not consistent with the rule's requirement that it be denominated "Judgment." But it may be that the Court believed that the letter reciting the judge's intent to enter final judgment sufficed. If so, then at least by implication, *Linzenni* approves the "apparent intent" of the trial judge test adopted in *Kessinger v. Kessinger,* 935 S.W.2d 347 (Mo. App. S.D. 1996).

The latest opinion on the subject is *St. Louis v. Hughes,* 950 S.W. 2d 850 (Mo. banc 1997). The defendant sought to appeal from four separate orders of the trial court entered over the course of four months. None of these orders were styled "judgment," although the word appeared at various points in several of them. The Supreme Court held that these orders were not final judgments because they did not comply with Rule 74.01(a):

> [T]he written judgment must be signed by the judge and must be designated a "judgment." Whether the designation "judgment" appears as a heading at the top of the writing, within the body of the writing in some other manner, or in the entry on the docket sheet, it must be clear from the writing that the document or entry is being "called" a "judgment" by the trial court. Depending upon the text, mere use of the word "judgment" in the body of the writing or docket entry may not suffice.

Hughes, 950 S.W.2d at 853.

At present, therefore, an order or docket entry need not be captioned "Judgment" in order to be a final judgment. In some cases, it is enough that the word "judgment' appears somewhere in the text of the order or entry. In other cases, that will not suffice. The only guidance is the *apparent intent* of the trial court.

Recommendation: Appeal early and often! It is better to file one too many notices of appeal than one too few.

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The Supreme Court has finally resolved the confusion over the appealability of a dismissal for want of personal jurisdiction. In *Chromalloy Am. Corp. v. Elyria Foundry Corp.*, 955 S.W.2d 1 (Mo. banc 1997), the Supreme Court held that the orders are reviewable by appeal. The rationale is that such a dismissal is a final judgment with respect to the issue of personal jurisdiction and would bar any subsequent attempt to file the action in a Missouri court. When the dismissal has the practical effect of terminating the litigation in the plaintiffs chosen forum, the dismissal is appealable.

Orders dismissing on venue grounds have produced inconsistent results. *Compare Giesler v. Burlington N. R.R.*, 791 S.W.2d 491 (Mo. App. E.D. 1990) (dismissal for want of proper venue is not final, hence not appealable), *with Kuiper v. Busch Entertainment Corp.*, 845 S.W.2d 697 (Mo. App. E.D. 1993) (dismissal on *forum non conveniens* grounds is appealable). The logic of *Chromalloy*, 955 S.W.2d 1, would suggest that such an order is appealable.